Volume 4

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JOSEPH C. SPERO, MAGISTRATE

SANFORD WADLER,)
)
Plaintiff,)
)
vs.) No. C 15-2356 JCS
)
BIO-RAD LABORATORIES, INC.,) San Francisco, California
et al,)
) Monday
Defendants.) January 23, 2017
) 8:00 a.m.
)

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

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P R O C E E D I N G S

JANUARY 23, 2017 8:02 A.M.

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(Proceedings held in open court, outside the presence and hearing of the jury.)

THE COURT: Good morning. So what shall we talk about?

MR. WAGSTAFFE: Our morning ritual. Thank you, your Honor.

One of the things we want to talk about today, your Honor, was the exhibits that the other side has indicated they want to use with their own witness on direct today. So we're doing that in advance of them doing it.

THE COURT: Which witness is this?

MR. WAGSTAFFE: This is Mr. Schwartz, who is on the stand still.

THE COURT: I see.

MR. WAGSTAFFE: They've got some exhibits and we want to talk about those.

THE COURT: Fine.

MR. WAGSTAFFE: And then -- Mr. Labar will talk primarily about those. And then they've given us some excerpts that they want to read from his own testimony. I want to talk about those.

THE COURT: Okay.

MR. WAGSTAFFE: And then, your Honor, when I stood up before about limiting instructions, you said do it before. So I'm ready to do the limiting instruction today as well.

THE COURT: Okay.

MR. WAGSTAFFE: And you've got that. But, your Honor, in that regard, to assist the -- we've already presented to the Court and the other side, but may I give this to your Honor?

THE COURT: Sure.

MR. WAGSTAFFE: This is the transcript where you discussed it and the order, the proposed order we gave to your Honor several days ago.

Mr. Labar can handle this.

THE COURT: Yeah. Okay.

(Whereupon document was tendered to the Court.)

THE COURT: Okay.

MR. LABAR: Good morning, your Honor.

The first exhibit disclosed by defendant we would like to talk about is Trial Exhibit 84.

THE COURT: You don't have a notebook, by any chance, for this witness? You don't have a notebook by any chance for this witness with all your --

MR. POTTER: For Mr. Schwartz, your Honor?

THE COURT: Yeah.

MR. POTTER: I can give you mine, if I can get it back.

THE COURT: No, no. Someone else is coming up with others. There we go.

(Whereupon a binder was tendered to the Court.)

THE COURT: Exhibit 84.

MR. LABAR: So, your Honor, in context Exhibit 84 is a series of handwritten notes written by Mr. Schwartz. They are not in any particular order, your Honor. This particular exhibit is a compilation of different pages of notes that were put together for the purposes of the deposition itself as, obviously, we raised a number of objections under 402, 403 and 802 here and that's the basis of our objections.

THE COURT: I'm not quite sure what you're talking about.

MR. LABAR: Okay.

THE COURT: The first page seems to be at least part of his script -- well, I don't know what these are. I don't know what these are. Go ahead.

MR. ASPERGER: Your Honor, to help focus the Court. The purpose of introducing this exhibit, if you flip a few pages, a number of pages back towards about the middle, there is a note dated 2/20/13.

THE COURT: I have it.

MR. ASPERGER: It would be Bates number --

THE COURT: "Sandy and Christine"?

MR. ASPERGER: Right. And those are Mr. Schwartz's contemporaneous notes of a conversation he had with Mr. Schwartz -- Mr. Wadler and Ms. Tsingos, and that's the page that we seek to introduce here.

So if the concern is the other pages, we can segregate this out and mark it separately.

THE COURT: So it's 16055 only?

MR. ASPERGER: Correct.

THE COURT: Yes.

MR. LABAR: The objection to this would be hearsay, your Honor.

MR. ASPERGER: So, your Honor, it's admissible on a number of grounds. First of all, it goes to Mr. Schwartz's state of mind, what he was thinking at the time and his frame of mind in dealing with Mr. Wadler and Ms. Tsingos.

It notes they are talking points that basically he's giving in his meeting with them. It goes to this -- they are contemporaneous. It goes to present sense impressions. It is a business record because --

THE COURT: It's not present sense impression. That's clever, but it's not. You did have me going on state of mind. That, at least, is arguable.

MR. ASPERGER: All right. I will withdraw that one.

THE COURT: But you're getting to the real one. You think it's a business record.

MR. ASPERGER: Yeah. Business record and state of mind.

THE COURT: I don't understand how his notes are -- go to state of mind other than the truth of what's in them. It's not like these are notes to him of something going to his state of mind. It is I wrote these down because I believed them, is what you're saying.

MR. ASPERGER: He's writing them down because they are talking points, as I understand it, that he's going to give to Mr. Schwartz and Ms. Tsingos.

THE COURT: Okay. Why aren't they a business record?

MR. LABAR: They are not a business record, your Honor, because there is no showing they were contemporaneously made.

THE COURT: I'm sure he will say that.

MR. LABAR: And his notes were not part of a regular practice. They were more ad hoc.

As we heard substantial testimony last week, he sometimes has notes, he sometimes doesn't, and sometimes the notes disappear. So in that regard, your Honor, they are not a business practice. They are ad hoc.

And, also, the circumstances involved here on all of these notes we're going to look at today, including this one, indicate a lack of trustworthiness. As you know, that's a factor under Subpart E of 8036. It's a lack of trustworthiness here because, again, these notes were not regularly made in the context of the anticipation of litigation that was clearly at issue here.

The case law supports the idea that where there is an anticipation of litigation, the trustworthy element is not met.

THE COURT: Okay.

MR. ASPERGER: Your Honor, he will lay the foundation as to the context, the reliability and as well as the fact that he was -- this was a practice of his to make notes and talking points prior to his -- to his meeting with Mr. Wadler and Ms. Tsingos.

MR. LABAR: One last point, your Honor, if I may.

THE COURT: Yeah.

MR. LABAR: He just said it was his practice "prior to." That means it's not contemporaneous.

THE COURT: It's overruled. Objection is overruled.

Next. As to that page only. So you're going to have to segregate it.

MR. LABAR: The next one I would like to take up, your Honor, we're going to go slightly out of numbering, is 95.

THE COURT: That is an email from Mr. Schwartz to Patrick Norton. What's the objection?

MR. LABAR: Hearsay.

MR. ASPERGER: So, your Honor this goes directly to state of mind and what he is thinking at the time. The specific relevance of some of these statements in here is it is

Mr. Schwartz writing back to Pat Norton after a conversation he had with him. He says:

"The good news is that we do not appear to have any FCPA issues and the contract administration shortfalls are something we can fix."

He also says:

"It was also helpful to have your insights as to someone who has lived and worked in China and understands the cultural and communication nuances."

Again, it goes to his state of mind. It's contemporaneous immediately following the conversation and it really goes --

THE COURT: Why isn't it a business record?

MR. ASPERGER: And it is -- it is a business record as well, your Honor.

MR. LABAR: I believe -- your Honor, I don't believe an email is a business record. I don't think there was any regular practice of communicating with Mr. Norton in this regard, so I would say that's why it's not a business record.

THE COURT: Overruled. Overruled.

MR. LABAR: Okay.

Next one, your Honor, is 99.

THE COURT: These are notes titled "Lou Drapeau, 3/6/13." So what's with these notes?

MR. LABAR: Your Honor, this is double hearsay. If you look on the third paragraph, you see a second bullet point or hyphen. It says:

"Davis Polk feels Sandy is setting himself up as a whistleblower."

This is a fact -- this is a statement relayed by Davis Polk to Lou Drapeau and then to Mr. Schwartz.

MR. ASPERGER: Number one, your Honor, it's not necessarily offered for the truth of the matter stated. It doesn't matter whether he's setting himself up as a whistleblower or not. It is certainly highly relevant to his state of mind that he is being told by Davis Polk that they believe Sandy is setting himself up as a whistleblower.

It's contemporaneous. It's also his regular practice to take notes in this type of a situation and lay that foundation as a business record.

THE COURT: So why isn't at least the first level of hearsay dealt with by the state of mind? It's not for the truth.

MR. LABAR: The first level, but the primary level is Mr. Drapeau -- I'm sorry. The second level is Mr. Drapeau speaking to Mr. Schwartz --

THE COURT: No, no. That's what I'm saying. Mr. Drapeau speaking to Mr. Schwartz would come in for state of mind. So then he writes it down and that comes in as a business record.

MR. LABAR: But the fundamental part is Davis Polk told Mr. Drapeau --

THE COURT: I appreciate that. Why isn't it state of mind?

MR. LABAR: Mr. Drapeau's state of mind --

THE COURT: No.

MR. LABAR: Sorry, your Honor?

THE COURT: No. Not Mr. Drapeau's state of mind. Mr. Schwartz's state of mind. Mr. Schwartz's state of mind is relevant in this lawsuit.

MR. LABAR: But each level of hearsay needs to be satisfied.

THE COURT: We're not understanding each other.

Mr. Drapeau says something. He says: Davis Polk feels Sandy getting himself -- setting himself up as a whistleblower. Okay, that's what he says.

Why doesn't that statement come in as informing us on Schwartz's state of mind because he was told that?

MR. LABAR: Well, your Honor, there is no indication here that's his present state of mind.

THE COURT: Okay. This is overruled.

MR. LABAR: And then lastly, your Honor, 100. We, again, assert a hearsay objection here.

THE COURT: These are Schwartz's notes dated March 6, 2013, is that right?

MR. LABAR: Yes, your Honor.

I would add by this date, March 6, 2013, there was clearly anticipation of litigation. We just saw a note indicating that Mr. Wadler was setting himself up as a whistleblower. And given that anticipation of litigation, the trustworthy element of the business record exception is not met.

THE COURT: So these look to be notes of the conversation with Mr. Wadler.

MR. LABAR: Correct.

THE COURT: Okay.

MR. ASPERGER: So they are contemporaneous. They are reliable. They are recording what Mr. Schwartz believes he is hearing from Mr. Wadler.

They make statements such as -- Schwartz says Wadler has resented him for ten years as evidenced by his salary review history and increases averaging one percent and not timely. And they make other contemporaneous statements as to what he thinks. And, also, it's his regular practice to make such notes, your Honor.

THE COURT: So that's a group of responses, not all of which are applicable to all of this, but I take it the last one you think, it's a business record, is applicable to all of it.

MR. ASPERGER: Right.

THE COURT: Is there something beyond a business record that you think is applicable to some of it?

MR. ASPERGER: Well, he will lay the foundation for a business record, your Honor.

THE COURT: No, no. I appreciate that. But is there something else that I should have the other side respond to other than a business record?

MR. ASPERGER: Sorry?

THE COURT: Is there something -- do you have some other reason why this is admissible other than a business record?

MR. ASPERGER: Well, one of the key issues, your Honor, is his state of mind at the time and what he is thinking, and it does -- it does go directly to his state of mind in terms of what is recorded in the document itself.

THE COURT: Okay.

MR. LABAR: Again, your Honor, even with the state of mind, there is a trustworthiness element to it. And here, given the anticipation of litigation at this point, it's not trustworthy.

THE COURT: That's overruled.

MR. LABAR: I believe we have one more, your Honor, Mr. Wagstaffe will address.

THE COURT: Okay.

MR. WAGSTAFFE: I think this is the easy one, your Honor, 85.

I think your Honor will recall they made an assurance to us they are not going to go back in time before late 2012. Now they want to admit his employee review from a previous year.

THE COURT: This is the 2/15/2011.

MR. WAGSTAFFE: No -- yes, 2011, your Honor.

And for the years 2009, 2010 we had a reassurance in this courtroom that we weren't going to be going there. I didn't prepare for this.

THE COURT: Okay.

MR. WAGSTAFFE: It's also not even dated.

MR. ASPERGER: So, your Honor, first of all, on the assurance. As I heard the arguments on the assurance, this was in connection with the motion in limine where they were arguing that certain things about his bad conduct and such as showing up at 10:30 in the morning and things like that shouldn't come into evidence. And it was in that context that we represented the focus would be after November of 2011.

The -- all of the FCPA-related issues go to the heart of this case. And, in particular, the plaintiff has made an argument that there wasn't notice. There wasn't warning. And that is a centerpiece because they have repeatedly said that there is nothing in the employment file that indicates Mr. Wadler was on any sort of notice.

What this review does is this goes to the evaluation, the conversation and the things that were told to Mr. Wadler about his failures in dealing with the FCPA and the compliance issues. And it has in it, for example, that you really created a black eye on the company because you failed to have a compliance program in place.

So, your Honor, I don't think it's covered in any way by the representations that we intended to make and actually made in court.

And number two, the whole period of the first investigation, as this Court is well aware, is an issue and this should be admitted as part of that.

THE COURT: So you are agreeing that anything other than the references to -- this is actually only as a paragraph under "Key Job Duties" and then there is the last sentence of the review. You think those two sentences -- those two things come in and everything else goes out?

MR. ASPERGER: No, your Honor. I think the whole thing comes in because it's relevant to the notice and he's being given a second chance on a number of issues. And this --

THE COURT: But it doesn't respond to your -- oh, and there is also a section on FCPA in the "Performance and Goals."

But all your argument went to FCPA issues and we have had evidence around -- about FCPA compliance and what was done and the investigation before -- that are before 2011. But the rest of this isn't FCPA.

MR. ASPERGER: Well, your Honor, again, our focus is the FCPA, but I think the entire review is admissible just as his performance at that point in time and how it fits into the mix, both of where he stands and, also, with respect to the FCPA issues.

And so there is a larger conversation and it's important to have the entire context and it goes directly to where Mr. Wadler stands.

Mr. Wagstaffe has created the impression that he got the best review ever in December of 2012 and wants to end the story there. That's not an accurate depiction of what is going on here.

THE COURT: This proves that he got the best review ever, December 2012 actually.

This is the 2009-2010, he's got a lower rating and he's got lots of negative comments. His next review had almost no negative comments really.

MR. ASPERGER: That context, your Honor, is certainly highly relevant for putting the -- putting -- for addressing the state of mind and the factors that are going into -- that are related to Mr. Wadler. They go directly to --

THE COURT: Whose state of mind?

MR. ASPERGER: Well, Mr. Schwartz's, the Board of Directors.

One of the things that is going to come out as we get into our case, your Honor, is that the Board of Directors is repeatedly recommending to Mr. Schwartz that he terminate Mr. Wadler and Mr. Schwartz is repeatedly giving him a second chance.

And then what clearly happens after November of -- after the review in the last six months of 2013 is Mr. Wadler fails completely in that second chance, and all of this is highly relevant to that.

MR. WAGSTAFFE: Your Honor --

THE COURT: The only thing I want you to address is FCPA. That's it.

MR. WAGSTAFFE: I want to address FCPA specifically.

THE COURT: That's it.

MR. WAGSTAFFE: The evidence in the record, though, with respect to the claimed relevance is notice, and Mr. Schwartz has testified under oath that he did not -- he decided he wasn't going to fire him in November of 2012 and, furthermore, that he never told Mr. Wadler about that.

THE COURT: Mr. Schwartz's state of mind.

MR. WAGSTAFFE: Yeah, I understand. Now -- and this going to come up right now with the in limine instruction. We -- and the transcript is really full of this with respect to the FCPA.

So perhaps we could look at the limiting instruction because that flows from the very transcript we had which is where we dealt with this issue, which is the prior FCPA as being a reason for termination, which is the only relevance they want to show this for. And what they told us --

THE COURT: Prior FCPA is what? Say it again.

MR. WAGSTAFFE: Your Honor, there's two stages of FCPA, as your Honor knows now. There is what happened in 2009, '10, '11 and then there is the China stuff in 2012. And they said they are not going to go into that except for a limited purpose. That's why -- and your Honor said give us a limiting instruction, which we prepared, your Honor, several days ago and we now have before you. I don't want to do it with the witness on the stand.

And it was very clear that the FCPA matters in 2009, '10 and '11 were not going to be admitted in any way related to his termination, in any way. And the only way they want to bring this in is to say that he had a bad review before and it dealt with FCPA and that was a background fact leading up to his termination. He'll testify, I'm sure, that it was an ongoing idea to terminate him.

And this prior review is exactly what they told us they weren't going to use. It's like they just told us in 84 they are not going to use the things before 2012.

And so, your Honor, this -- we've given this instruction to your Honor several days ago. We've given it to the other side and we've given you the transcript right now to remind every one of what happened several days ago.

THE COURT: Just a second.

(Brief pause.)

THE COURT: All right. Let's take this step-wise.

MR. POTTER: Let me, hopefully, simplify the issue for the Court and narrow the issue for the Court.

Your Honor, with respect to Exhibit 86, the only sections that we would seek to introduce would be the -- actually, the two passages that the Court identified; the first paragraph as general counsel and then the last paragraph relating to more proactive legal focus with respect to the -- to the FCPA mess. Those would be the only two passages that we would seek to introduce. And the -- and the overall grade, I suppose, we would ask to include as well.

But with respect to the other areas of performance problems, we are perfectly content to have those sections redacted so that the only sections that the jury would be receiving would relate specifically and exclusively to FCPA matters.

THE COURT: Okay. So just to take it a step at a time. The reason I -- FCPA matters might -- he wasn't fired for failure to have an FCPA program. That's not the defense, right. You said that once already, so it's easy to say yes.

MR. POTTER: Right. Yes.

THE COURT: The relevance of the lack of -- of criticisms to him of the FCPA program or lack of program that he had before 2011, or whatever it was, is that it suggests a motivation for manufacturing. A reaction that makes him look like he does have an FCPA compliance program or he's doing something about it. That was the argument that was raised before, and it was the narrow basis on which I thought this was okay.

So why isn't that -- why aren't these two things in the first instance, leaving aside a limiting instruction, relevant to that, Mr. Wagstaffe?

MR. WAGSTAFFE: Because, your Honor, first of all, it was never communicated to my client --

THE COURT: No, no, no. This is a review.

MR. WAGSTAFFE: No, I understand that. I'm talking about that he was being considered to be fired.

THE COURT: Well, there will be testimony that it was communicated to him. So that's a separate issue.

MR. WAGSTAFFE: I don't actually think that's true, your Honor.

THE COURT: Mr. Norton is going to get on the stand. He's going to say: I told your client that I recommended he be fired.

MR. WAGSTAFFE: No. He -- he testified under oath in response to my cross that he never told -- he never told Mister --

THE COURT: I just went through the transcripts and maybe it wasn't Mr. Norton, maybe it was somebody else.

MR. POTTER: It was Mr. Norton.

THE COURT: It was Mr. Norton. And he testified under oath that he did tell him. So --

MR. WAGSTAFFE: I'm sorry. I missed the time frame, your Honor. He told him when?

THE COURT: He told him in connection with the first review, with the 2009-10 FCPA review. Before he met with the Board of Directors or the Audit Committee, I can't remember which one it was, he said he met with your client and he told him -- this was the cross of Mr. Potter, and got a negative reaction from your client, of course, saying, no, that didn't happen, but there is going to be testimony.

But in any event, this -- there is no dispute that this -- that's his signature on it; that this went to your client and gave him some notice that there were problems with how he was handling FCPA stuff that the client -- that Bio-Rad took seriously. Why doesn't that go in on the same basis that I've let in the other FCPA stuff from the same time period?

MR. WAGSTAFFE: I think it's remote in time. This is 2011, which is two full years before we get to it.

Second of all, I do believe that your Honor's ruling on relevance before was that we're not going to get into all the other things that he did that he did wrong. Hence, the limiting instruction. They didn't fire him for this reason. They did not fire him for this reason.

THE COURT: That's the limiting instruction, and we'll deal with the limiting instruction. But I'm going to allow the portions of this that reference the FCPA and the dates of the review and the generic things, but not anything else and not the specific rating.

MR. POTTER: Okay.

MR. WAGSTAFFE: Can I then put into evidence the things that he writes in this review that he says he did things that were well done?

THE COURT: Well, if you're going to do that, then we're going to put in the whole review.

MR. WAGSTAFFE: Well, your Honor, it seems to me -- they are trying -- I understand that, but it seems to me they are trying to get --

THE COURT: I'm saying yes. You can put in whatever you want, but that's no -- they can open the door. You can put in whatever you want.

MR. WAGSTAFFE: I appreciate that, your Honor.

THE COURT: In terms of the limiting instruction --

MR. POTTER: Your Honor, we do have a brief limiting instruction that we prepared over the weekend that I can give to counsel and the Court, if the Court is inclined.

MR. WAGSTAFFE: I haven't seen it yet, your Honor.

MR. POTTER: May I approach, your Honor?

THE COURT: Yeah, please.

(Whereupon document was tendered to the Court.)

THE COURT: Okay. I don't know that I actually have the printout of Mr. Wagstaffe's limiting instruction.

MR. WAGSTAFFE: Your Honor, I have it. I think I gave you both.

THE COURT: So this is the --

MR. WAGSTAFFE: The limiting instruction should be up there.

THE COURT: Wait, wait, wait. No, no. I've just got the -- I don't have it.

MR. WAGSTAFFE: There is another one, your Honor.

(Whereupon document was tendered to the Court.)

THE COURT: Why don't you guys meet-and-confer about this, because my general reaction is that limiting instructions should say that the evidence is for a particular purpose and no other purpose.

I'm not inclined to talk about what the evidence shows in general in limiting instructions. So I'm a little bit reluctant to say -- well, I don't know. I want you guys to meet-and-confer.

MR. WAGSTAFFE: Your Honor, the second sentence of ours is the one I think you're concerned about.

THE COURT: Yeah, and the --

MR. WAGSTAFFE: I appreciate that. We could delete that, if it satisfies your Honor's concerns.

The problem with meeting-and-conferring, your Honor, is it's this witness right now --

THE COURT: Well, I don't know. Do you have a problem with theirs?

MR. WAGSTAFFE: I do, your Honor.

THE COURT: There's is generic in the sense that it's very -- it's more neutral than yours.

MR. WAGSTAFFE: Well, I think if we knocked out my second sentence, your Honor, it's a fairer statement of what your Honor did. We're about to hear it -- they are about to use the -- now they are going to get to use a 2009, 2010 employment review about FCPA and the jury is going to begin to think that maybe he got fired for that reason.

That's the reason why we need the limiting instruction. Because you let it in for a very limited purpose of state of mind, not for any indication that that was part of the reason for firing him. And if you read theirs, the jury won't hear that at all.

THE COURT: Why isn't that right?

MR. POTTER: Well, your Honor --

THE COURT: I mean, I could say something like: Mr. Wadler was not fired. The parties agree that Mr. Wadler was not fired for failure to have -- to implement an FCPA compliance program prior to 2010.

MR. POTTER: I just don't think that there is sufficient confusion in the record that the -- sort of the weight of the Court should be called in to provide an instruction that is decidedly pro plaintiff. I don't think it's a particularly confusing proposition.

I stated in my opening that it was his conduct in the last six months that gave rise to his termination. We've never deviated from that presentation of facts with the jury, so I don't think it's a very confusing proposition.

THE COURT: Don't you think -- we're about to get into an area where it might be confusing though. I mean, there are a number of witnesses who are going to testify that his -- during this period of time, there were recommendations to the Board that he be fired and the Board, in fact, considered those recommendations and I think had a positive reaction to some of them.

Isn't it -- isn't there likely -- I put it that way only as a devil's advocate and not because I decided it. But isn't it likely that the jury might think: Oh, that was a good reason to fire him?

MR. POTTER: You know, I don't think so for two reasons, your Honor. One, in my opening I was crystal clear that it was the last six months of his tenure that gave rise to his employment.

And, secondly, to the credit of Mr. Wadler, he has very capable counsel representing him, who will very clearly make known to the jury that this was not a factor in the decision to ultimately terminate the plaintiff.

I imagine that might be the very first question that he puts to Mr. Schwartz on recross and I expect that Mr. Schwartz's answer itself will remove any confusion that might exist on this issue.

And so given that that is the record, I just think it's a dangerous proposition for having the Court to come in and instruct on evidence in a way that's favorable to the plaintiff when there is not going to be a bonafide dispute. And any real confusion based upon what I said in my opening and what the witness will stay on the stand, I just don't think it's needed. And if it's not needed, I don't think it should be given.

MR. WAGSTAFFE: Your Honor, given that they are now going to see an employment review where it's mentioned, I think there is a distinct risk that the jury will think -- as I think that's why they are doing this, is to think: Well, this was a continuous decision process, which this witness has said repeatedly and it was an ongoing thing. He was a good guy and he didn't fire him for it, but he could have.

I think, your Honor, that's why we need this instruction and that's why I think we're talking about in limine.

MR. POTTER: And I will proffer to the Court that the testimony actually is going to be after that review and notwithstanding those problems, the decision was reached by Mr. Schwartz not to terminate him.

THE COURT: No, no, I understand. And that has some impact on the confusion, but doesn't eliminate it completely.

Well, I think it -- so I'm thinking about doing this right after Mr. Schwartz completes his testimony.

MR. WAGSTAFFE: Okay.

THE COURT: At that point you will have asked the question whether or not Mr. Wadler was fired based in any way on his purported failure to implement an FCPA compliance program prior to 2010.

If Mr. Schwartz says "no," then I -- then that dissipates that particular element of the confusion and I would give their instruction. If he says anything other than "no," then I will give their instruction, plus the sentence:

"Mr. Wadler was not fired based on any failure to implement an FCPA compliance program prior to 2010."

MR. WAGSTAFFE: I understand, your Honor.

MR. POTTER: Thank you, your Honor.

MR. WAGSTAFFE: Your Honor, one last matter. They just advised us, I think it was over the weekend, wasn't it? Over the weekend they want to play -- have us play further parts of his deposition, they say, for completeness or something like that.

Rule 32(a)(6) does, of course, allow that request. It's just not timely. You do that in advance of my playing the depositions, not -- it's clearly hearsay as to them. I get to use it because it's a party statement. The deposition is hearsay. It is not the 801(d)(2), you know, prior fabrication business.

So it is only for completeness. And, your Honor, first of all, I don't think it is, but more importantly, this is not the way we do it. Because I played the testimony. They knew we had it. It was on our list. And they are supposed to say before we do that --

THE COURT: Was the specific testimony that you were going to play on your list?

MR. WAGSTAFFE: I'm not playing any more testimony that relates to these issues.

THE COURT: No, I understand. The testimony that you already played.

MR. WAGSTAFFE: Yeah. Yes.

THE COURT: Was that already disclosed to them?

MR. WAGSTAFFE: Yes. Oh, yes, of course. A long time ago.

THE COURT: That was disclosed to them when we disclosed excerpts of depositions?

MR. WAGSTAFFE: December, I think. So we don't do it after the fact and say: Hey, can you read some more?

THE COURT: What's the answer to that?

MR. POTTER: Well, your Honor, Rule 82 -- 32, I think it's (a)(6), is rule of completeness. So they played snippets where they stop at a certain point in time. And all we're saying is under the rule of completeness the entire statement should be presented to the jury.

THE COURT: Well, this is a deposition. So did you -- when you got their original description, did you add those snippets to their original description?

MR. POTTER: These snippets were all part of their original designation.

So, in other words -- in other words, what they did was we counter designated the parts of the transcript that we thought to be supplement, but we didn't redesignate the parts of the transcripts that they had already designated.

Do you see what I'm saying?

THE COURT: I see. I get that.

Why don't they get to play stuff that you've already designated?

MR. WAGSTAFFE: Your Honor, if you give me a moment. I've heard that. Let me ask my colleagues whether that's even true.

THE COURT: Certainly.

(Discussion held off the record amongst defense counsel.)

MR. WAGSTAFFE: While they are doing that, your Honor, the rule does not contemplate doing it now.

Because, your Honor, you'll recall when I asked your Honor when they were reading something from Mr. Wadler: Your Honor, I'd like to read the next two pages. You said: No, that was supposed to have been done earlier.

Remember, I stood up and I said: Your Honor, for completeness --

THE COURT: No, I understand. But we didn't talk about whether you had designated that before.

MR. WAGSTAFFE: I understand.

THE COURT: Okay.

MR. WAGSTAFFE: Your Honor, if you'll give me a moment?

THE COURT: Sure, sure. Go ahead.

(Discussion held off the record amongst plaintiff's counsel.)

MR. WAGSTAFFE: We have an answer, your Honor.

THE COURT: Oh, good. Yes, sir.

MR. WAGSTAFFE: Two of them were not designated by them -- were not in our designations and not counter designated. One was. This last one, 141/22 to 142/8 was part of our designation.

MR. POTTER: Your Honor, may Ms. Bellshaw give you the record on the designation?

THE COURT: Sure.

MR. POTTER: She knows it better than I do.

MS. BELLSHAW: Your Honor, sorry, I don't have all of the numbers up here with me, but I believe that one of the designations, Line 94/7 to 94/9, they played during Mr. Schwartz's cross examination and that was not originally included in their designations and so we didn't counter designate it. We would like to play the next few lines.

THE COURT: Okay.

MS. BELLSHAW: The second one, we'd like to play that portion they designated and we did include in our counter designations.

THE COURT: Which -- give me the page and line, please.

MS. BELLSHAW: And that is -- they played Line -- Page 141, Line 22 to Line 25.

THE COURT: And they had previously designated what?

MS. BELLSHAW: They had -- that's what they had previously designated.

THE COURT: So that's designated, but not played by them?

MS. BELLSHAW: I believe that's -- no. They played that -- I'm sorry, your Honor. They played that last week during Mr. Schwartz's cross.

THE COURT: And what do you want to play?

MS. BELLSHAW: We'd like to play Page 141, Line 22 through Page 142, Line 8.

THE COURT: And was that designated by you in your counter designations or was that designated by them? What is that?

MS. BELLSHAW: I believe it was designated --

THE COURT: Well, "I believe" doesn't --

MS. BELLSHAW: Let me just -- I have it here...

MR. WAGSTAFFE: We designated it, your Honor.

THE COURT: Okay.

MS. BELLSHAW: They designated it.

And then we're withdrawing the last one that we told them about over the weekend. So it's just those two, your Honor.

THE COURT: Okay. Are those okay?

MR. WAGSTAFFE: I --

THE COURT: Are those okay?

MR. WAGSTAFFE: I'm hearing you. I didn't get the numbers. The 94/7 -- we would play -- we'll just play the whole thing again, 94/16 to 96/12 we'll play.

THE COURT: 94?

MR. WAGSTAFFE: We'll play 94/16 to 96/12 --

THE COURT: Okay.

MR.WAGSTAFFE: -- when we do this. We can do it whenever we want, your Honor, of course, as the rule says.

THE COURT: If you don't play it, they are going to get to play it.

MR. WAGSTAFFE: Of course, I understand. I'm obliged to play it under the rule, your Honor. If your Honor rules, it's me.

They are not going to play 92/5 and 93/18. And as to the other one, 141/22 to 142/8, we'll play that and we may play more around it.

THE COURT: All right. There you go.

MS. BELLSHAW: Okay, your Honor.

THE COURT: So let's get the --

MS. KRAMER: Your Honor, there are a few other issues. One we need to take up now the other we can wait on.

THE COURT: What do you need to take up now?

MS. KRAMER: So they intend to use Exhibit 14 with Mr. Schwartz. There is no foundation for using it with Mr. Schwartz.

MR. WAGSTAFFE: I'll make it easy, your Honor. I'm not going to.

MS. KRAMER: Oh.

MR. WAGSTAFFE: I'm going to use it with their HR person, because Mr. Schwartz testified it wasn't in the HR file and it is. I'm not going to impeach him with it. He doesn't know. I'll ask their HR person.

THE COURT: Okay.

MS. KRAMER: All right. Thank you.

MR. ASPERGER: Then, your Honor, one other of their exhibits we object to is Exhibit 70. 70 is an email that Mr. Wadler sent to Christine Tsingos on February 23, and it relates -- Mr. Schwartz was copied on it, but it relates to meetings, disclosure meetings and other meetings that Mr. Schwartz had nothing to do with. So it is hearsay and not admissible through Mr. Schwartz.

THE COURT: Well, you think it's a business record, don't you?

MR. ASPERGER: This is an email from Ms. Tsingos to him, so he doesn't have anything to say on a foundation for it, your Honor.

THE COURT: So it's a business record, right? You stipulate that this is a business record, don't you?

MR. LABAR: Yes, we do, your Honor.

THE COURT: So what's the problem, other than hearsay?

MR. ASPERGER: My apologies, your Honor, if it is. If it's coming in -- if it's admissible as a business record. He doesn't have a foundation, so he's not going to know anything about that, but if it's admissible and it's already in evidence, then he can say that.

THE COURT: Okay. Proceed.

MS. KRAMER: Your Honor, just in the interests of bringing in the jury, as I said, we have two other issues that we'll need to take up today. Should we do that after lunch?

THE COURT: What are those?

MS. KRAMER: I'm sorry?

THE COURT: What are those? Just generally.

MS. KRAMER: One relates to a witness we're taking out of order today, Ms. Madden, and they have designated a couple objections -- a couple documents that we object to.

THE COURT: Okay.

MS. KRAMER: Do you want to take that up now?

THE COURT: No, I do not.

MS. KRAMER: Okay. And the other just relates to sort of the timing of witnesses, but we can address that later.

THE COURT: Great.

MR. WAGSTAFFE: Your Honor, I'm sorry. Could I have five minutes because I don't -- Exhibit 85 is -- they are now saying it's going to be in and I need to -- I have some questions. If I could have four minutes?

THE COURT: So why don't -- do you need to be the person to deal with the objections that counsel was just talking about? You could do the redactions or whatever you need to do while someone else argues the two things and you can deal with that?

MR. WAGSTAFFE: Sure. Very skilled...

MS. KRAMER: So we're bringing in a witness out of order today. Her name is Ann Madden. And they have designated a couple --

THE COURT: Remind me who she is.

MS. KRAMER: She is a manager in Bio-Rad France.

THE COURT: Okay.

MS. KRAMER: And they have designated two documents. One is Exhibit 25.

THE COURT: Okay. Somebody hand me Exhibit 25.

MS. KRAMER: Do you want mine?

THE COURT: Sure.

(Whereupon document was tendered to the Court.)

THE COURT: Exhibit 25.

MS. KRAMER: There is no foundation for using that document with Ms. Madden. Those are not her notes. There is no indication that she has ever seen those.

MR. LABAR: Your Honor, they are Ms. Corey's notes and they frequently worked together. If I can lay a foundation that they she recognizes them as Ms. Corey's handwriting, then they should come in.

THE COURT: How are you going to use them?

MR. LABAR: I'm going to ask her if -- to recollect certain events that occurred at a meeting they are going to be talking about.

THE COURT: Okay.

MS. KRAMER: Well, he can use it to refresh her recollection, I suppose, if he needs to, but they are not her notes.

THE COURT: It's someone else's notes of a meeting with her?

MR. LABAR: Correct.

MS. KRAMER: Her and some other people, yes.

THE COURT: I see. And why isn't it a business record?

MS. KRAMER: Well, I suppose it would -- could be a business record, but there is no foundation with this witness. She won't know about these notes.

THE COURT: Good. Then we'll just not have her testify until I get the person on the stand who can testify as to foundation --

MS. KRAMER: Well, no. I'm not objecting it's a business record.

THE COURT: Good. So it is a business record.

MS. KRAMER: Okay. Fine.

THE COURT: You'll stipulate to that, right?

MS. KRAMER: Yes.

THE COURT: Okay. Well, then what? Then she gets examined on it, right?

MS. KRAMER: Then I guess she can be asked about them.

THE COURT: Good. Okay, good.

And what's the other one?

MS. KRAMER: Well, the other one is an email. It's Exhibit 283. And my only objection is that the top of the email string is -- doesn't include Ms. Madden.

And, again, there is no foundation for using that document with Ms. Madden. But if your Honor is going to take the position that all the emails are business records, then I'll withdraw my objection.

THE COURT: I think you're going to take the position that they are business records.

MS. KRAMER: Then I'll withdraw my objection.

THE COURT: Okay.

MR. LABAR: Thank you, your Honor.

MS. KRAMER: And then there will be one issue about witness timing, but we can --

THE COURT: We'll deal with that when we need to deal with that.

Okay. So, Mr. Wagstaffe, are you guys ready for the jury?

MR. WAGSTAFFE: Yes, your Honor. Thank you for that time.

(Jury enters the courtroom at 8:49 a.m.)

THE COURT: Good morning, ladies and gentlemen. Thank you for being so timely. I'm sorry to keep you waiting this morning, but we had some important materials to -- evidentiary rulings to accomplish before you came in. We've now accomplished them and we're ready to proceed.

Mr. Wagstaffe.

MR. WAGSTAFFE: Thank you, your Honor.

NORMAN SCHWARTZ,

called as a witness for the Plaintiff herein, having been previously sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION RESUMED

BY MR. WAGSTAFFE

Q. Good morning, Mr. Schwartz.

A. Good morning.

Q. You recall when we were last together on Thursday we were talking about the review that you put in the file that you made up in July of 2013; do you recall that?

MR. POTTER: Objection. Misstates the evidence.

THE COURT: Overruled.

A. Yes.

BY MR. WAGSTAFFE

Q. And that's the review --

MR. WAGSTAFFE: If we can put that up on the screen?

(Brief pause.)

MR. WAGSTAFFE: I guess it's not turned on yet, your Honor. It's like my computer at home.

THE COURT: Karen, is this --

MR. WAGSTAFFE: They are the ones who run it, but I guess it's not on.

(Discussion held off the record between the Court and the Clerk.)

MR.WAGSTAFFE: If you can put Exhibit 87 before the jury?

(Document displayed.)

BY MR. WAGSTAFFE

Q. It's kind of a faded image there. You remember that, don't you, sir?

A. Yes.

Q. Okay. And that was the review that you typed in July of 2013, a month after Mr. Wadler had already been terminated, right?

MR. POTTER: Objection.

THE COURT: Overruled.

A. Yes.

BY MR. WAGSTAFFE

Q. And you tell us, sir, that you think you had notes that you typed from when you did this, right?

A. Yes.

Q. Did you have those notes -- you don't have them -- as you're sitting here now you have no memory whatsoever that you actually had notes, isn't that right?

A. Correct.

Q. You're just guessing that you had notes at all?

A. This was my normal practice.

Q. That's not my question. As to whether you had these notes, you would just be guessing, right?

A. Yes.

Q. Well, it's not your normal practice, is it, sir? You actually don't have any notes of any reviews in draft form in your file at all for the year 2012, do you, or '13?

A. Today?

Q. Ever. You don't have them in your file. You threw them away, right?

A. When -- when I put them in the computer, yes, I throw them away.

Q. So are you telling this jury that your sense of your practice was that you actually still had the notes a month after Mr. Wadler left?

A. I don't know. I don't recall.

Q. And you threw them away --

A. I don't recall.

Q. Do you recall actually throwing them away?

A. No.

Q. It is, in fact, your practice that if a note has something significant in it, you put it into the file for Mr. Wadler, right?

A. Yes.

Q. And you had a practice of keeping notes, but only from time to time, right?

A. I 'm not sure I understand the question.

Q. Well, you keep notes when you meet with employees, but only from time to time, isn't that right? Not every time?

A. Correct.

Q. And with respect to the handwritten notes here that you

say you might have had, they are nowhere in the file at all, are they?
A. No.
Q. You thought they were significant, didn't you? Important notes that you supposedly wrote some months earlier, right?
A. Yes.
Q. And, by the way, that review wasn't limited to 2012, although that's what it says. If you see up at the top it says "2012." Do you see that?
A. Yes.
Q. Although it's focal year 2012, you didn't -- any more than you did in your prior review that you gave him, you didn't limit this to 2012, did you?
A. The performance objectives were for 2012.
Q. That's not my question, sir.
When you were writing this, you didn't limit yourself to things that happened from December 31, 2012 on. You were talking about things that happened in 2013 as well, right?
A. Yes.
Q. Because when you write a review, the review is intended to cover the period of time from when you give the review, not just the date on the top; isn't that right?
A. It is a review for the focal year 2012.
Q. But, in fact, you make several references in your comments about things that happened in 2013? More than one time you

talk about things that happened in 2013, right?
A. Yes.
Q. And that's because when you were typing this in July, you were discussing things happened after the focal year, right?
A. Yes.
Q. Okay. And you know, do you not, that all the notes you thought were significant in Mr. Wadler's file, if you thought they were significant, you would have put them in the file, right?
MR. POTTER: Objection --
A. Yes.
MR. POTTER: -- asked and answered.
THE COURT: Overruled.
BY MR. WAGSTAFFE
Q. And, in fact, you didn't put these notes in a file, right?
A. That's correct.
Q. And that's because the notes didn't exist, isn't that right?
A. No.
Q. Now, when you wrote your -- typed in your notes in July of 2013, right, were you trying to set forth the reasons why you fired Mr. Wadler?
A. No.
Q. Well, you didn't mention a thing about anything he had done with respect to the FCPA prior to December 20th of 2012,

isn't that right?
A. I'm sorry. I didn't get all that.
Q. When you wrote your opus about why you were firing Mr. Wadler, for your own purposes you weren't giving in the review, did you include one word about what he had done about the FCPA before December of 2012?
A. No.
Q. Because, in fact, you did not fire Mr. Wadler because of the way he handled the FCPA prior to December of 2012, isn't that right?
A. Yes.
Q. Because by December 20th of 2012 in the review you did give to him, you told him he had done a good job on the FCPA and fixed it, right?
A. In -- I'm sorry. In the 2011 review --
Q. That's not my question.
A. You've got me confused.
Q. Okay. Let me try --
A. Sorry.
Q. You handed a review to Mr. Wadler on December 20th of 2012, correct? Correct?
A. Yes.
Q. And you were communicating with him in person about his performance as of that day and time, isn't it, just like you did with this one, right?

A. Yes.

Q. And on that day you actually praised him for the way he handled the FCPA issues, compliance, handling the issues in Vietnam, et cetera? You praised hypothetical in writing, didn't you?

A. In the 2011 review, yes.

Q. And you did that in person with him on December 20th of 2012, correct?

A. Yes.

Q. You did not fire Mr. Wadler in any way because of what he did with the FCPA's compliance program, training, et cetera prior to December 20th of 2012, correct?

A. Correct.

Q. Now, at deposition you were asked an open-ended question, do you recall, about why you terminated Mr. Wadler? Do you recall that?

A. No.

Q. All right.

MR. WAGSTAFFE: Your Honor, perhaps we could play 19/20 - 20/14.

THE COURT: Any objection?

MR. POTTER: No objection.

THE COURT: Go ahead.

(Videotape played in open court, not reported.)

BY MR. WAGSTAFFE

Q. Mr. Schwartz, you understood you were being asked to give all the reasons why you decided to terminate Mr. Wadler, and those are your reasons, right?

A. Yes.

Q. Not a word in that answer about the FCPA, right?

A. No.

Q. Now, you talked about fits of yelling. I'd like to ask you about that phrase "fits of yelling."

As far as you can recall, Mr. Schwartz, as you told us at deposition, you can only recall one time after January of 2013 that you ever saw or heard Mr. Wadler yell, isn't that right?

A. I personally observed one instance, yes.

Q. You made the decision to fire him, didn't you?

A. Yes.

Q. And you saw him virtually every day, didn't you?

A. Yes.

Q. And he was four doors down, right?

A. Yes.

Q. And that entire -- the entire time from your review of December 20th, 2012 until the time you fired him you only heard him yell once?

A. In my presence.

Q. And as far as -- well, and now the one time you saw Mr. Wadler yell at Ms. Tsingos, he was yelling about the need

for more documents for the Life Tech audit, isn't that right?
A. Yes.
Q. And that was March of 2013, right?
A. I believe that was March of 2013.
Q. And that was after you wrote your email to HR on February 22nd talking about his bizarre behavior, right?
A. I believe so.
Q. So the Ms. Tsingos interaction wasn't even part of your mind when you wrote the email to HR saying he ought to be -- we ought to consider putting him on administrative leave, right?
A. Yes.
Q. But with respect to the meeting in March with Ms. Tsingos where Mr. Wadler was being vocal about -- about not getting documents, you don't remember anything else that was said by anybody else at that meeting, right?
A. No.
Q. Mr. Wadler didn't swear at Ms. Tsingos, did he?
A. No.
Q. He didn't make any personal insult or personal attack, right?
A. No.
Q. He was passionate about the fact that he had been seeking documents for some two years to get behind the Life Tech audit and he raised his voice, isn't that right?
A. Yes.

Q. Now, if you'll turn to Exhibit 84. I only want to look at Page 16055.

(Witness complied.)

THE COURT: Exhibit?

MR. WAGSTAFFE: It's in 84, your Honor, but because of our discussion we're looking right now only at 16055.

A. You say Exhibit 84?

BY MR. WAGSTAFFE

Q. I thought it was. Let me see if I can get it.

(Whereupon exhibit binder was tendered to the witness.)

THE COURT: Which --

MR. WAGSTAFFE: I'm trying to find it, your Honor. Excuse me.

THE COURT: Go ahead.

THE WITNESS: And the number again?

MR. WAGSTAFFE: 16055.

THE COURT: One -- it's not in --

MR. WAGSTAFFE: It is. It's in there, your Honor, I think. It says "Sandy and Christine" at the top.

BY MR. WAGSTAFFE

Q. Do you have that, sir?

A. Not yet.

Q. Oh.

A. There are a lot of documents in here.

(Brief pause.)
Q. It will say "Sandy and Christine" at the top.
A. I'm looking for the 55 at the bottom.
There we go, okay.
Q. Now, these -- do you recognize what those are, sir?
A. Yes.
Q. Your handwriting?
A. Yes.
Q. The first four bullet points were made in advance of your meeting with Mr. Wadler and Ms. Tsingos?
A. Yes.
Q. Her first name is Christine, right?
A. Yes.
Q. Okay. And they were not notes taken at the meeting itself, right?
A. Correct.
Q. Okay. And the notes down at the bottom, the bullet points down at the bottom, those were written at a later time, correct? Not part of the meeting?
A. They were -- yeah, I'm not -- I'm not -- I can't be sure exactly when they were written.
Q. But you recalled at your deposition they were actually written in a different ink color, right? You recall that, don't you?
A. No, I don't.

Q. But they were, weren't they?
A. I don't know.
Q. Okay. But you have no memory -- well, did you keep those notes in the ordinary course of business?
A. Yes.
MR. WAGSTAFFE: Your Honor, I'd move the admission of Exhibit 84.
MR. POTTER: No objection, your Honor.
THE COURT: It's admitted.
(Trial Exhibit 84 received in evidence)
BY MR. WAGSTAFFE
Q. You don't -- you see at the top --
MR. WAGSTAFFE: This is 16055, the very top.
(Document displayed.)
BY MR. WAGSTAFFE
Q. These are your notes of a meeting sometime in February of 2013, right?
A. Correct.
Q. You actually don't even remember what day it was, do you?
A. No.
Q. You can't even say it was the beginning or the end of February, can you?
A. No.
Q. And you don't remember anything Sandy Wadler said during the meeting, do you?

A. No.
Q. And you don't -- even though these are -- this is your script notes in advance, this was not intended to be, in your mind, a recitation of what was talked about, was it?
A. Yes.
Q. Well, you don't remember anything Christine Tsingos said during the meeting, do you?
A. I don't believe either Sandy or Christine said much during the meeting.
Q. All right. If you go down to the bottom, the very bottom, the first asterisk point, it says:
"Slow follow-up to China."
You don't even know what that means, do you, as you told us at deposition?
A. Sorry? I didn't get all that.
Q. I'm sorry. If you'll see the very first bullet point up there?
A. Yes.
Q. You've got it on your screen there as well.
It says:
"The slow follow-up to China matter."
Do you see that?
A. Yes.
Q. As you told us at deposition, you don't even know what that note meant as you sit here now, do you?

A. At the time I didn't recall.

Q. Okay. And your notes, if you go up -- well, your notes were designed for you to communicate that both Christine and Sandy were responsible for a problem with communication, right?

A. Yes.

Q. And you needed to sit down with both of them, as supervisors sometimes do, and tell them they needed to find a way to work it out, right?

A. Yes.

Q. And you sat down with both of them, because you wanted both of them to change their behavior, right?

A. Yes.

Q. No written reprimand of any kind in either of their files, right?

A. Correct.

Q. And if you'll go to the fourth bullet point?

A. Yes.

Q. You actually said at the meeting that if their behavior didn't change you would need to do something, right?

A. Yes.

Q. You didn't ever tell Mr. Wadler or Ms. Tsingos that you were thinking of firing them, did you?

A. I think it would be a pretty fair understanding from this statement.

MR. WAGSTAFFE: Well, if we could play 71/9 to 21?

THE COURT: Any objection?

MR. POTTER: No objection.

THE COURT: Go ahead.

(Videotape played in open court, not reported.)

BY MR. WAGSTAFFE

Q. So you didn't say in so many words that you were thinking of firing Mr. Wadler at this time or any time prior to June 7th, isn't that right?

MR. POTTER: Objection. Vague.

THE COURT: Overruled.

A. So could you ask me the question again please?

BY MR. WAGSTAFFE

Q. Sure. You just told us you think you might have been talking about firing here but, in fact, you never talked to Sandy Wadler about firing him at any time until June 7th of 2013, isn't that right?

A. That is correct.

Q. So this wasn't a meeting talking about firing. It was just about two people to get along, right?

A. That was the principal --

Q. Okay. And --

A. -- idea.

Q. You didn't fire Ms. Tsingos, did you?

A. No.

Q. Does she still work for the company?

A. Yes.

Q. Now, if you'll go down to the notes below, it talks about $20 million offer to Life without a management consultation, right?

A. Yes.

Q. That's not true, is it? Mr. Wadler consulted with you on the Life Tech reserve on a regular basis, didn't he?

A. He consulted with me, but this is a true statement.

Q. So you wrote a note down saying that it was a bad thing about Sandy because he failed to consult, but he was talking to you, the CEO, on a regular basis, is that right?

A. I'm sorry. Could you say that again?

Q. Sure. You're telling us that you wrote this note in this big meeting as a result of Christine and Sandy, and you were talking about he didn't consult with management, yet, he consulted with you regularly as the CEO? Is that what you're telling us?

A. Yes.

Q. If you go right below it. "Insubordination" is one of those words you write down on a paper if you want to fire somebody, isn't it?

MR. POTTER: Objection. Argumentative.

THE COURT: Overruled.

A. It's a factor, yes.

BY MR. WAGSTAFFE

Q. A factor. That's -- that's the one you can immediately fire someone because they were insubordinate, even if they had been there a long time, right?

A. Yes.

Q. You wrote this note because you wanted to create a record that looked like you had a reason to fire Sandy Wadler, isn't that right?

A. No.

Q. Well, in fact, he wasn't insubordinate to you or anybody when he took that trip to New York in February of 2013 to hire a lawyer? He wasn't, was he?

A. Yes, he was.

Q. He wasn't insubordinate to you, was he?

A. Yes.

Q. You somehow were going to play a role as to investigation of your own conduct, is that right?

A. He was -- I was his supervisor.

Q. You knew that Mr. Drapeau and the Audit Committee authorized him to go hire a lawyer, right?

A. Yes.

Q. And you have no trouble with the general counsel going to New York to meet with the very lawyers the company was considering hiring, do you?

A. No.

Q. In fact, that wasn't insubordinate. That was actually carrying out the wishes of the Audit Committee from which you're supposed to be separate, right?
A. Yes.
Q. Okay. And, in fact, he was not insubordinate because he was doing the task to which he was assigned those days, wasn't he?
A. He was insubordinate to me.
Q. With respect to that trip?
A. Yes.
Q. Because, what, it costs some money and you didn't want to pay it?
A. No.
Q. Let's talk about insubordination and ordering. Did you order him not to go to New York?
A. No.
Q. Okay. Did you believe that you had some authority to overstep the independent Audit Committee and tell Mr. Wadler what he should and shouldn't do with respect to hiring a law firm?
A. No.
Q. Now, let's talk about yelling. You've told us you heard him one time, and that was after your February 22nd memo.
You've yelled at work, haven't you?
A. It's possible.

Q. Well, you've yelled at Mr. Wadler on occasion, haven't you, like people do; right?
A. Yes.
Q. And you -- you're dealing with a billion dollar company with a lot of large transactions and a lot of pressure; isn't that right?
A. Yes.
Q. It's not uncommon for people, particularly if they feel strongly about doing something, to be animated in those circumstances, right?
A. Right.
Q. Now, Colleen Corey is the head of Human Resources, right?
A. Yes.
Q. And she told you that Mr. Wadler had yelled at her at some point, right?
A. Yes.
Q. But you never even talked to Mr. Wadler about Ms. Corey's complaints, did you?
A. No.
Q. You didn't try to get his side of the story, did you?
A. No.
Q. You just thought that Ms. Wadler -- excuse me. You just thought that Ms. Corey's report was part of, can I use your words, a pattern of behavior?
A. Yes.

Q. But with respect to Ms. Corey, you don't even know what they were talking about, do you?

A. That's not true.

Q. When you say a "pattern" would you agree it was somewhere between one and three times that people were talking about Mr. Wadler yelling a little bit?

A. I don't know the number of times. I'd have to think back on that.

Q. All right. And as to these yelling -- this yelling pattern, you can't even remember what dates any of them occurred, can you?

A. No.

Q. And Mr. Wadler, let's be frank. He was not the only person in the company that yelled occasionally, did he?

A. Probably not.

Q. Well, you used to have a Chief Operating Officer, the COO, named Jim Bennett. Do you recall him?

A. Yes.

Q. He was a notorious yeller, wasn't he?

MR. POTTER: Objection. Relevance, your Honor.

THE COURT: Overruled.

A. Yes.

BY MR. WAGSTAFFE

Q. And he worked for the company til 2003 as an officer?

A. Yes, I believe that's correct.

Q. I take it you were in on the scuttlebutt that they actually -- people in the company actually made a video about him yelling he was so extreme. You remember that, don't you?
A. I remember there was a video.
Q. All right. And he then -- after he retired, he didn't just leave the company. He then went on to the Board of Directors, this yeller, correct?
A. No.
Q. Well, he went on the Board of Directors until 2011, didn't he?
A. Yes.
Q. So he was a yeller and, yet, he got put on the Board of Directors, right?
A. In what time frame?
Q. Well, you tell me. What years was he on the Board of Directors?
A. He was on the Board of Directors for many years.
Q. Up to and including 2011, right?
A. Yes.
Q. You were CEO of the company. Let's be clear on one thing. You never fired -- strike that.
The company never fired Mr. Bennett at any time despite knowing these qualities, right?
A. Correct.
Q. Let me ask you about some of the people that Mr. Wadler

worked closely with. Mr. Wadler had a very good relationship with his administrative assistant, right?

A. I believe so.

Q. What's her name? What's her name?

A. This was Cindy Barlow.

Q. And Ms. Barlow is the one on the day of Mr. Wadler's firing, you asked her not to be sitting at her desk that day?

A. No.

Q. You realize HR instructed her not to even be at her desk the day the firing took place, right?

A. Yeah. I don't know -- I don't know what they told her.

Q. Now, Mr. Wadler had a very good working relationship with Mr. Cassingham, didn't he?

A. Yes.

Q. Mr. Cassingham is still a lawyer for the company, right?

A. Yes.

Q. In fact, none of the lawyers who work for Mr. Wadler ever complained to you or expressed dissatisfaction to you about his management of them, right?

A. Correct.

Q. Now, let's look back at Exhibit 87, if we could?

(Document displayed.)

Q. Exhibit 87 is the review you wrote a month after Mr. Wadler -- Mr. Wadler was fired.

You've read this many times before coming here to testify haven't you, sir, in preparation?

MR. POTTER: Objection. Vague.

THE COURT: Overruled.

A. I've seen this before, yes.

BY MR. WAGSTAFFE

Q. Exhibit 87 does not say anything about fits of yelling, does it?

A. No.

Q. It doesn't say one word about Mr. Wadler ever raising his voice, right?

A. Correct.

Q. You hadn't come up with that excuse when you wrote this in July of 2013, correct?

A. It was not part of this review.

Q. What -- what you were telling people regularly was that you thought Sandy Wadler was paranoid, isn't that right?

A. Say that again?

Q. You were telling people that you thought Sandy Wadler was paranoid. Isn't that the word you used, regularly?

A. No.

Q. Can we turn to Exhibit 100?

(Witness complied.)

Q. You know what the word "paranoid," "paranoia" is, don't you, sir?

A. Yes.

Q. Mental illness, characterized by delusions, correct?
A. Yes.
Q. And you were telling people, including Mr. Wadler himself, that you thought that he was delusional because you called him paranoid, right?
A. I don't recall having that conversation with him.
Q. Okay. Well, let's look at Exhibit -- tell us what Exhibit 100 is.
A. Okay.
Q. What is it?
A. This is a -- these are notes that I took after meeting with Sandy on March 6, 2013.
Q. All right. And you wrote these notes after the meeting, right?
A. Yes.
Q. Because it says "met with Sandy," right?
A. Yes.
Q. Did you keep these notes -- did these notes find their way to your file?
A. Yes.
Q. So when the requests for documents were made in this case, you opened up the Sandy Wadler file and at least these notes were right there, right?
A. Yes.
Q. And you were not taking any notes during the meeting, were

you?
A. No.
Q. Okay. At the bottom of the first page -- strike that.
MR. WAGSTAFFE: Your Honor, I would move this into evidence.
THE COURT: Any objection?
MR. POTTER: No objection, your Honor.
THE COURT: It's admitted.
(Trial Exhibit 100 received in evidence)
BY MR. WAGSTAFFE
Q. If you'll go to the bottom of the first page?
A. Yes.
Q. You said:
"Hard to get him engaged on how to solve current audit accrual issue."
Do you see that?
A. Yes.
Q. But he did, in fact, get the audit accrual issue resolved. The company resolved it, right?
A. Yes.
Q. All right. And if you go -- if you'll go up to -- on Page 2, the first paragraph starting with "Repeatedly."
In this conversation Mr. Wadler told you, did he not, that he was understaffed to handle the tasks you were giving him, right?

A. He said he was under a lot of pressure. Oh, and -- yes.
Q. And he did not feel he had the staff, right?
A. Right.
Q. He had been telling you that for months, right?
A. Yes.
Q. And you kept telling him no more staff, right?
A. Yes.
Q. And you wrote in this note that you thought he was ranting. Is that what you wrote? Do you remember saying that?
A. Yes.
Q. That somehow he seemed overly suspicious. Do you recall that that was your impression, correct?
A. Yes.
Q. You were having the meeting to get back on track, right?
A. Yes.
Q. So let's go to the bullet point starting with "Lot of paranoia."
(Document enlarged.)
Q. That was your words, right?
A. Yes.
Q. He didn't say he was paranoid, did he?
A. No.
Q. You told him you thought he was paranoid, right?
A. I wrote in this -- I wrote that here, yes.
Q. And he told you that he was paranoid around the Life audit

because of lack of documents, right?
A. Yes.
Q. The paranoia you were describing, the delusion, was that somehow Mr. Wadler was delusional about the need to get documents, right?
A. So you're mixing up "paranoia" and "delusion."
Q. All right. So when you used the word "paranoia," you didn't think he was delusional as the word is defined?
A. No.
Q. All right.
A. That wasn't the intent of what I wrote here.
Q. Well, you certainly, when you're talking about "recurring themes" on the next page --
MR. WAGSTAFFE: If you can go to the next page and come back to this?
(Document displayed.)
BY MR. WAGSTAFFE
Q. "Recurring themes" in your notes?
A. Uh-huh.
Q. Right? Nothing about FCPA there, right?
A. Where are you?
Q. The top of the page. "Recurring themes" you were writing?
A. Yes.
Q. Nothing about FCPA there at all, right?
A. No.

Q. But you wrote down "paranoid," right?
A. Yes.
Q. And you wrote that down because you thought Mr. Wadler was paranoid and delusional because he had been asking for documents for two years and they weren't forthcoming, right?
A. Yes.
Q. You understood that he was simply trying to do his job to get the documents, right?
A. No.
Q. You didn't talk to him one word about yelling. That didn't show up here, did it?
A. No.
Q. So on March 6th the issue of yelling was not on your mind when giving some employment advice to Mr. Wadler, right?
A. Correct.
Q. Yelling shows up once we're in litigation, isn't that right? That's the excuse, isn't it?
A. That's the excuse?
Q. Sure. You weren't papering yelling. It wasn't in the HR file. It wasn't in your notes when you created them in July. But now you're talking about yelling, isn't that right?
A. Yes.
Q. Okay. So you thought, as you wrote in your notes, as you expressed to Mr. Wadler, that he was paranoid because of lack of documents, right?

A. Yes.
Q. Okay. Were you paranoid about that?
A. No.
Q. You understood that there was a lot of trouble getting very important documents on the Life Tech audit going back to years, isn't that right?
A. No.
Q. It really mattered to you personally as a CEO, as well as Mr. Wadler, to get those documents, right?
A. Yes.
Q. Let's go to 89.
A. 89.
(Witness complied.)
Q. You recognize what 89 is, don't you?
A. Yes.
Q. Your email of November 1st, 2012? Do you see that?
A. Yes.
Q. Okay. And it was written to Ms. Tsingos, right?
A. Yes.
Q. Keep that in the ordinary course of your business?
A. Yes.
MR. WAGSTAFFE: Your Honor, I'd move it into evidence.
THE COURT: Any objection?
MR. POTTER: No objection.
THE COURT: It's admitted.

(Trial Exhibit 89 received in evidence)

MR. WAGSTAFFE: If we can put it on the screen? Just blow up the text.

(Document displayed.)

BY MR. WAGSTAFFE

Q. Certainly, on November 1st you were telling Ms. Tsingos that you were very concerned that you had only gotten one document despite the long time you had been seeking them on the Life Tech audit, right?

A. Yes.

Q. Let's go to Exhibit 90.

(Witness complied.)

Q. Sir, you weren't paranoid about getting documents, were you?

A. No.

Q. You knew that was a really important thing for the company to be pursuing, right?

A. Yes.

Q. Okay. Well, let's look at -- look at Exhibit 90. Do you know what that is?

A. Yes.

Q. That's an email from you to Mr. Magni. Who is Mr. Magni?

A. At the time he was the -- he was the Vice-President of International Sales.

Q. That was some three weeks later from the prior email we just looked at?

A. Probably.

Q. Keep it in the ordinary course of your business, this email?

A. It looks like about a week later. My copy.

Q. Okay, fair enough. And you keep it in your ordinary course of business?

A. Yes.

MR. WAGSTAFFE: Your Honor, I'd move Exhibit 90.

THE COURT: Any objection?

MR. POTTER: No objection, your Honor.

THE COURT: It's admitted.

(Trial Exhibit 90 received in evidence)

MR. WAGSTAFFE: If you could blow up the text to Mr. Magni. Just the text? Thank you.

(Document displayed.)

BY MR. WAGSTAFFE

Q. On the 19th of November you were communicating with a Board of Directors member saying that you were concerned you weren't getting enough documents, right?

A. No.

Q. (As read)

"As you may know, we are trying to collect more data from some of our distributors to support our position."

You were trying to collect more documents, right?
A. Yes.
Q. (As read)
"And Fiance had been working this, but they probably need help from your organization."
Right?
A. Yes.
Q. Because you knew you were having trouble getting the documents from your own distributors despite having an audit clause in their contract, didn't you?
A. I don't know about the audit clause in the contracts.
Q. You didn't know, as a CEO, that you could get documents pursuant to a request in an audit contract with your own distributors?
A. I'm -- I don't have knowledge of the -- of the details in the contracts.
Q. In any event, you were frustrated, were you are not, that you were having trouble getting documents from distributors?
A. We were trying to help Sandy to collect documents.
Q. Well, because he was very concerned about it, right?
A. Yes.
Q. He was paranoid about it because it mattered so much to the company because if these documents didn't show up, you might have a $38 million exposure, right?
A. Yes.

Q. You want a general counsel to be paranoid about that, don't you?
A. You want him to be concerned about it, yes.
Q. Okay. Go to Exhibit 91.
(Witness complied.)
Q. You know what 91 is, don't you, sir?
A. Yes.
Q. And this was an email from you to Ms. Tsingos dated November 19th, 2012?
A. Yes.
Q. About the Life audit, right?
A. Yes.
Q. Okay.
MR. WAGSTAFFE: Your Honor, I'd move it into evidence.
THE COURT: Any objection?
MR. POTTER: No objection, your Honor.
(Trial Exhibit 91 received in evidence)
(Document displayed)
BY MR. WAGSTAFFE
Q. This is an email from Ms. Tsingos right after you communicated with Mr. Magni, right?
A. Yes.
Q. You are telling her, are you not: Hey, he may be able to help us, right?
A. Yes.

Q. And you write:
"I can't imagine the distributors would not have these records."
Correct?
A. Yes.
Q. This Life audit issue had been in place already for well over a year, right?
A. The Life audit --
Q. Sure.
A. -- had been going on for well over a year, yes.
Q. You had this independent auditing company that said it might be $30 million, right?
A. Yes.
Q. And you were doing your best to try and get behind that, weren't you?
A. Yes.
Q. And that's why you wrote this email, because you were paranoid; that is, you were -- let me try it different.
You were very insistent that we get these documents, right?
A. Yes.
Q. Okay. Turn to Exhibit 92.
(Witness complied.)
Q. Do you recognize this?
A. Yeah. I'm having a hard time reading this, it's so small

on this page.

Q. Let me ask you this. You know who Mr. Frank Gao was at the time. That is, by the end of November 2012 you know who he was, don't you?

A. Yes.

Q. Okay. And he was one of the people in China that was trying to help get the documents, right?

A. Yes.

Q. And he communicated to you by email, did he not, that the YY Company, which was a 40 percent of the China business in North China wasn't -- hadn't got any documents from them yet, right?

A. Again, I'm sorry. I just can't read this. It's too small on the page.

Q. I'll help you --

MR. WAGSTAFFE: First of all, your Honor I would move this into evidence.

THE COURT: Any objection?

MR. POTTER: Your Honor, may I have just one minute.

THE COURT: Yes. Can I also see a copy of it, please? I don't have it in my binder. I've got a binder, but it's not got that in it.

MR. POTTER: Your Honor, I'm not sure this was disclosed, so if I could also see a copy of it?

THE COURT: Yes.

MR. WAGSTAFFE: Your Honor, it's in their exhibits that they were going to use.

THE COURT: Well --

MR. WAGSTAFFE: Your Honor, may I approach and hand this up?

MR. POTTER: No, it's not.

THE COURT: It's not in their exhibits.

MR. WAGSTAFFE: Well, your Honor, then I would --

THE COURT: In any event, why don't you let Mr. Potter see it.

(Brief pause.)

MR. POTTER: We have no objection, your Honor.

THE COURT: Okay.

MR. POTTER: Thank you.

THE COURT: So it's admitted.

(Trial Exhibit 92 received in evidence)

BY MR.WAGSTAFFE

Q. If you can turn to the second page, sir. We'll put it on the big screen so it will be easier to read.

A. The second page is easier to read.

Q. I'll make it east your.

MR. WAGSTAFFE: Ms. Guzman, if you go to where it says: "The above end user contracts"? There we go.

(Document displayed.)

BY MR. WAGSTAFFE

Q. Do you see that?

A. Yes.

Q. Mr. Gao was telling you that despite the fact that it had been well over a year, you still didn't have any documents from your YY distributor in China. You knew that, didn't you?

A. I don't understand "well over a year."

Q. Sure, you do. The Life Tech audit situation had arisen well over a year before this email was written, right?

A. Correct.

Q. And getting documents to try and defend yourself against the extra mark-up of 1.67, which is a lot of money, you needed documents to try and prove what the distributors had and, if you could, try and get the end user documents, right?

A. Yes.

Q. That was a really big issue for the company that had been going on for over a year, right?

A. Getting the documents?

Q. Sure?

A. No.

Q. Well, you understood that even though it had been more than a year, you still didn't have the documents from your own distributor, YY, right?

A. No.

Q. That's what Mr. Gao told you, isn't it?

"Our major distributor in North is not able to provide any to us."

He told you that, didn't he?

A. Correct.

Q. And you knew that was YY, right?

A. Yes.

Q. Your biggest distributor with an audit clause in the contract and you couldn't get any documents?

MR. POTTER: Objection. Assumes a fact not in evidence.

MR. WAGSTAFFE: Your Honor, I'll withdraw the question. Let me try it again.

THE COURT: Okay.

BY MR.WAGSTAFFE

Q. The biggest distributor in all of China, your own distributor, and you couldn't get any documents for well over a year?

A. I'm sorry. The question was?

Q. It's true, isn't it, that you couldn't get any documents from YY for over a year by the time you got in email, right?

A. No.

Q. So Mr. Gao wasn't telling you the truth?

A. Does he say a year?

Q. Was he telling you the truth?

MR. POTTER: Objection. Form.

THE COURT: Sustained.

A. In --

THE COURT: I sustained the objection.

A. In this statement.

THE COURT: Stop, stop, stop.

THE WITNESS: Sorry.

THE COURT: When I sustain an objection, you can't answer it.

THE WITNESS: I'm sorry.

THE COURT: No problem.

BY MR. WAGSTAFFE

Q. Let's turn to Exhibit 99.

(Witness complied.)

Q. You certainly know what Exhibit 99 is; don't you?

A. Yes.

Q. Mr. Drapeau was the person on the independent Audit Committee, wasn't he?

A. Yes.

Q. And you wrote some notes of your conversation with him on 3/6, didn't you?

A. Yes.

Q. And you had a conversation with him in which he talked about the subject with you of whistleblowing, didn't he?

A. Yes.

Q. You knew Mr. Wadler was simply trying to get documents, yet, you and Mr. Drapeau started labeling him a potential whistleblower, didn't you?

A. So could you ask that again? I'm not sure I understood the question completely.

Q. Okay, Mr. Schwartz. You understood, did you not, in your conversation with Mr. Drapeau that the two of you were labeling him a potential whistleblower, weren't you?

A. No.

Q. Well, you certainly exchanged conversation with Mr. Drapeau that you thought Sandy was setting himself up as a whistleblower; isn't that what you guys talked about?

A. This is Lou Drapeau who is making this comment?

Q. And did you disagree with him?

A. No.

Q. The two Board members, one on the independent Audit Committee and one who might be the subject of the committee, are talking on March 6th about Sandy Wadler's efforts, is that right?

A. Yes.

Q. Did you tell Mr. Drapeau you thought I was paranoid?

A. I don't recall.

Q. But you certainly talked about whistleblowing, right? That subject came up, didn't it?

A. It did.

Q. And the two of you said: I think he's setting himself up as a whistleblower. Wasn't that the position you guys were taking at that point?

A. No.

Q. And, in fact -- well, you wrote it right here in your own notes of the conversation; that the law firm felt that Sandy was setting himself up as a whistleblower. That's in your handwriting, right?

A. Yes.

Q. Because you thought that he wanted all these documents and he was being a paranoid whistleblower because he wanted to get them, is that right?

A. No.

Q. And this is the same time you told Mr. Drapeau that you were done with Sandy, but did not want him to fire him until the FCPA investigation, right?

A. I do not see that here. Is there --

Q. My question to you: You told us last week, you'll recall, that you told Mr. Drapeau in early March that you wanted to keep Sandy on until the FCPA part was over, right?

MR. POTTER: Objection. Misstates the evidence.

THE COURT: Why don't you rephrase that?

MR. WAGSTAFFE: Sure.

BY MR. WAGSTAFFE

Q. You talked to Mr. Drapeau in early March, did you not, that you -- after you had written the email to HR saying you wanted to consider putting him on administrative leave, that you wanted to keep Sandy on until the FCPA investigation was over, right?

A. That's possible.

Q. That's because you had already decided to fire him and were just holding off until it was a more propitious time for the company, right?

A. No.

Q. The fact of the matter is is that when you're talking about whistleblowing, that you had already decided to fire him; isn't that right?

A. No.

Q. In March of 2013 you understood that Davis Polk felt there was a great need to continue investigating, didn't you? You learned that?

A. Yes.

Q. You learned that Davis Polk was -- by the way, when you hired Davis Polk, you felt that was an appropriate hire, did you not?

MR. POTTER: Objection. Vague as to "you."

MR. WAGSTAFFE: I'll fix it.

THE COURT: Please.

BY MR. WAGSTAFFE

Q. Mr. Schwartz, you personally thought the hiring of Davis Polk to implement a further investigation was a good idea when

the Audit Committee learned of it, correct?
A. Yes.
Q. And you knew that was going to cost a lot of money, right?
A. Yes.
Q. And you knew they had looked at what Sandy Wadler had written in his audit report? You knew that, didn't you? Right?
A. Yes.
Q. And you knew at the very outset they had concluded, based on information, it's worth doing a serious investigation. You knew that's what they told the company, isn't that right; in about the time they were hired, right?
MR. POTTER: Objection. Lacks foundation.
A. Yes -- sorry.
THE COURT: Go ahead. Yes, you can answer that.
BY MR. WAGSTAFFE
Q. Okay. And that's because Mr. Wadler had raised some very legitimate concerns about the absence of documents, about the Chinese contracts and the fact there might be some free product being given reflecting bribery. You knew those were legitimate points, didn't you?
A. Those were the points that were made, yes.
Q. And you knew that Mr. Drapeau himself had said it was a good -- it was a good thing that Sandy had brought this to the Audit Committee's file. You knew that, didn't you?

A. I don't -- I don't recall Mr. Drapeau's comments.
Q. Mr. Drapeau never told you that he thought it was a good idea that Sandy brought this up?
A. No.
Q. All right. There were a lot of unanswered questions, weren't there, even as of March, 2013? Isn't that right?
A. Yes.
Q. And that's why the company spent a lot of money on a law firm to look into these serious situations, right?
A. Oh, yes.
Q. So as of November 11th, the company had only collected documentation for a single transaction, right?
A. Yes.
Q. And you personally were concerned that if the company was not able to gather the documents you needed, you would not be able to defeat Life Tech's claim for an upcharge, right?
A. Yes.
Q. And you understood that the company could not establish its liability to Life Tech if it could not prove end user prices, right?
A. Right.
Q. Did you ever instruct someone to use your economic leverage to get those end user documents? Don't give us the documents, we quit doing business. Did you ever consider that?
A. Yes.

Q. You never implemented that, though, did you?
A. Directly, no.
Q. And how about the distributors? Did you ever -- to your knowledge, ever exercise an audit right to make sure you got those documents sooner than in two years?
A. No, I don't know that.
Q. But the purpose of gathering the documents was to try and save the company upwards of $30 million, right?
A. Yes.
Q. And Mr. Wadler told you forcefully and passionately on repeated occasions that he was concerned that if you didn't have enough documents to prove your case, the royalties might be increased. He told you that, didn't he?
A. Yes.
Q. Let's go to Exhibit 84. And, again, I'm going to be looking at 16056. And if it helps, it's three from the end.
(Brief pause.)
Q. Do you have it, sir?
A. Okay. I have it.
Q. Do you recognize these notes?
A. Let me just take a minute here.
(Brief pause.)
A. Yes.
Q. And could you tell us what it is?
A. These look like notes that I made during a meeting when we

were talking about royalty accruals.
Q. Okay. What's the date of the document?
A. It's in April 2013.
Q. Let's be more specific. You actually wrote --
A. April 22, 2013.
Q. Okay. Now we got it all. That's 11 days after the Board had already authorized you to fire Mr. Wadler, right?
A. Yes.
Q. And that's a couple months after you had told the HR that you wanted to put him on administrative leave, correct?
A. Yes.

MR.WAGSTAFFE: Your Honor, I move these into evidence.

MR. POTTER: No objection, your Honor.

THE COURT: It's admitted.

(Trial Exhibit 84 received in evidence)

MR. WAGSTAFFE: If we go to the top right. This is 16056, Sarah. There we go. Thank you. Top right.

(Document displayed.)

BY MR.WAGSTAFFE
Q. Your handwriting, is that right?
A. Yes.
Q. And these notes found their way into your file? At least these did, right?
A. Yes.
Q. You said April, but you knew it was April 22nd when you

read it, right?

A. Yeah. I'm sorry.

Q. Fair enough. And you understood, did you not, that these notes were made to yourself, right?

A. Yes.

Q. And you see that the third action item? If you go to the third one, it says "I/E." The third bullet point in.

A. Yes.

Q. Could you read that to the jury?

A. It says:

"I/E company end user pricing. Need to collect end user data. Need to figure this out."

Q. April 22nd of 2013 you personally thought that this was still a pretty big need for the company to figure this out, right?

A. Yes.

Q. And you needed to gather more end user data, right?

A. Yes.

Q. You thought passionately that this was a serious issue for the company, didn't you?

A. Yes. This was a serious issue.

Q. And as of April 22nd Bio-Rad had not yet answered the questions about missing documents in China, isn't that right?

A. Yes.

Q. Now, the only other thing you said, other than fits of yelling, in our deposition as to why you fired Mr. Wadler was that he was making erratic decisions; do you remember that?

A. Yes.

Q. But the one and only decision you thought was erratic was the amount of the accrual or the reserve for the Life Tech audit; isn't that right?

A. What time frame are you talking about?

Q. I'm talking about when you answered our question at deposition and you said the only other thing than the fits of yelling one or two or three times was the -- the only erratic decision you thought he made was the amount of the accrual for Life Tech, is that right?

A. I don't recall the exact testimony.

Q. Page 20, Line 15 to 21, Line 4.

THE COURT: Any objection?

MR. POTTER: No objection.

THE COURT: Go ahead.

(Videotape played in open court, not reported.)

BY MR.WAGSTAFFE

Q. Let me make sure I've got this right, Mr. Schwartz. There were no other decisions Mr. Wadler made in 2013, other than his concern about the Life Tech audit accrual or reserve, that you thought was erratic, isn't that right?

A. No.

MR. WAGSTAFFE: Could we read 21/19 to 24?

THE COURT: Any objection?

MR. POTTER: No objection.

THE COURT: Go ahead.

(Videotape played in open court, not reported.)

BY MR.WAGSTAFFE

Q. Mr. Schwartz, before the deposition you reviewed many documents and understood that your primary basis for firing Mr. Wadler in your mind was erratic decision making, correct?

A. Yes.

Q. And, therefore, at deposition the only one you could tell us after all that preparation, at that time, was the Life Tech reserve, right?

A. Yes.

Q. Let's look at that for a second. The Life Tech accrual or reserve relates to how much money Bio-Rad told shareholders it would be accruing for the audit claim by Life, right?

A. Yes.

Q. You've got to tell the shareholders realistically what the exposure is going to be; am I saying that right?

A. Yes.

Q. And you claim that it was somehow Mr. Wadler's fault you needed an extension of the 10-K in 2013 because he wouldn't agree to the accrual numbers, right?

A. Correct.

Q. But the issue as to the inadequate reserve for Life Tech

had been raised by Mr. Wadler as early as 2012, correct?
A. That I don't recall.
Q. Well, he raised it months and months before the 10-K was due, isn't that right?
A. I don't recall that.
Q. Well, even the outside auditors at Ernst and Young didn't even learn of the issues raised by Sandy Wadler in his audit memo for almost two weeks because Mr. Drapeau had dropped the ball in telling them, right?
A. I don't know that.
Q. You don't know that, is that right?
A. I don't.
Q. Well, it wasn't Mr. Wadler's fault that the head of the Audit Committee didn't tell the auditing company for two weeks after the issue was raised, was it?
A. I don't know.
Q. But you knew, did you not, that in April 2012, despite a $30 million, you know, audit investigation by Life Tech, that you only had $807,000 reserved. Did you know that?
A. I don't remember the numbers.
Q. Did you know that even by July of 2012 when the documents still weren't coming in, you only raised the reserve to 1.47 million?
A. I don't recall.
Q. And even in November of 2012 when Mr. Wadler is raising

these serious concerns, the audit reserve only got raised to $3.5 million, correct?
A. If you say so.
Q. Well, you were concerned that Mr. Wadler wasn't going along with the program to keep the number low, right?
A. No.
Q. But you knew, did you not, that the exposure potentially was much greater than 1.47 million or 3.5 million even. You knew that, didn't you?
A. The potential?
Q. The range of exposure that you should tell your shareholders about?
A. That was the -- that was the number that was thought to be the exposure at the time.
Q. And Mr. Wadler was the voice in the wilderness saying: Hey, we keep trying to get documents and I'm concerned that in the absence of documents, we're facing tens of millions of dollars exposure. Right? He told you that, didn't he, in his paranoid state?
A. This was in March when we -- when we talked about that.
Q. So it was your view and it was a reason for firing him that Mr. Wadler had delayed the filing of the 10-K; is that why you fired him?
A. That was a factor.
Q. So one of the reasons you're now telling us you fired him

was because he -- it was his fault for delaying the 10-K, right?

A. Yes.

Q. Because he wanted to have a higher reserve number and wouldn't sign that legal letter from the lawyer, general counsel saying: Okay by me to have 3.4 million. Isn't that what happened?

A. No.

Q. Well, let's talk about this delay. The 10-K was going to come out on March 1st, right?

A. About that time.

Q. Of 2013, right?

A. Yeah. I don't know the exact date.

Q. All right. Now, see if I can get this. Is it your position in firing Mr. Wadler for this reason that it was -- well, first of all, that reason wasn't in your Exhibit 87 document from July, was it? You didn't talk about that, did you?

A. Specifically, no.

Q. When you wrote your script for firing him, you didn't talk about he was late on this 10-K, did you?

A. No.

Q. In fact, when you wrote the script for firing him, you didn't talk about yelling at all, did you?

A. No.

Q. Okay. And that script was trying to be honest with Mr. Wadler as to the reason he was being fired after 26 years with the company, isn't that right?

A. Yes.

Q. Did you just forget it when you were firing him?

A. No.

Q. Okay. So now let's talk about this delay. So is it your -- was it your state of mind in late February of 2012 that Mr. Wadler at the very last minute raised the issue of the Life Tech reserve? Is that your position as to why you fired him?

A. No.

Q. In fact, you knew that Ms. Tsingos herself had told the auditors that in February of 2012 she wanted some of her people to -- in Finance to go to China to investigate the absence of documents and other things, right?

A. I don't know the conversation.

Q. Well, you're the one who told Ms. Tsingos she couldn't send her people to China, right?

A. No.

Q. Certainly by February 20, you know, more than a week before the deadline, right, Davis Polk had informed the company that the issue of what the reserve should be for Life Tech needed to be looked at. You knew that well in advance of a week before the deadline, right?

A. That Davis Polk told us that?

Q. Sure. On February 20.

A. I don't -- I don't recall that.

Q. All right. And you certainly learned that about a week in advance of the deadline Latham and Watkins was already working on drafting an extension request in the normal course of business, right?

A. I believe so.

Q. And you didn't think Mr. Wadler had a reasonable basis for thinking it ought to be a higher number; is that what you're telling us?

A. No.

Q. If he reasonably thought it was a higher number than the 3.5 million he was at for this potential $30 million exposure, wasn't it his job to not sign off so the shareholders weren't misled?

A. Yes.

Q. And he was just doing his job because he -- you understood that he passionately believed that the number was too low and shareholders might be misled and he had been trying for well over a year to try and get documents to figure out what the number should be, right?

A. No.

Q. Well, certainly by February 27th, a couple days before the deadline, you knew that Mr. Norton, after his investigation, had come back to the company, right, to report, right?

A. Yes.
Q. You were at that meeting, right?
A. Yes.
Q. He told you he had gone to China to do his investigation, right? With a big PowerPoint slide. Do you remember that?
A. I'm having trouble recalling the exact meeting.
Q. Okay. Well, you understood that Mr. Norton before the deadline of filing the 10-K arose, you learned that he had said there were some problems with the China contracts, but he hadn't investigated yet. You knew he told you that, didn't he?
A. That sounds right.
Q. And you knew that he told you that one of the things he was going to investigate were the perceived motives for providing extra or free products? That was one of the issues he needed to look into, right?
A. Yes.
Q. And on the 27th of February he told you he hadn't done that yet? You learned that, didn't you?
A. I -- I don't recall the exact conversation.
Q. Well, do you recall the PowerPoint slides in which -- do you recall, excuse me, a meeting, a telephone meeting in which that's what he said?
A. I -- I vaguely remember a telephone meeting.
Q. This was important, wasn't it, whether the 10-K would get extended, the deadline?

A. Yes.

Q. And if the investigation wasn't fully completed, you wanted to have the right number and the delay was okay with you, wasn't it?

A. Say that again?

Q. Sure. The delay was okay with you if there was a reasonable basis for believing that the Life Tech reserve or accrual was too low, right? You got to delay that if that's -- if there's we don't know yet, right?

A. We want to have the right numbers, that's for sure.

Q. That's for sure. And that's what Mr. Wadler told you. He said: I just want to make sure I have the right number. He was concerned the number was too low, right?

A. Yes.

Q. And he was passionate in saying: I'm very concerned because I'm not getting documents for over a year, despite repeated requests, and Mr. Norton is telling us he hasn't even investigated these things. We've got to have a delay and I can't sign a letter; right?

MR. POTTER: Objection as to form.

THE COURT: Try that again.

MR. WAGSTAFFE: Okay. I'll try that again. It got going, didn't it?

BY MR. WAGSTAFFE

Q. Mr. Schwartz, you understood in that telephone conversation with Mr. Norton, Mr. Wadler and others that Mr. Wadler raised the issue that there was some concerns about further investigation. He raised that, didn't he?

A. Yes.

Q. Raised it passionately, didn't he?

A. Yes.

Q. To get people's attention, did he raise his voice?

A. I don't recall.

Q. And you learned, did you not, that Mr. Norton had not even actually talked to or tried to talk to the end users or any distributors to get the documents. You learned that your investigator that Davis Polk wanted to use hadn't even tried to get those documents from them directly. You learned that, didn't you?

A. I don't remember that detail.

Q. And you learned in that telephone conversation of February 27th that Mr. Norton thought that the addition of these unauthorized terms in the Chinese language contracts raised additional questions about the general integrity of the situation, correct?

A. Again, I don't remember the specifics of the conversation.

Q. But it's still your testimony that Mr. Wadler was the one who caused the delay?

A. Yes.

Q. Now, Mr. Wadler was on a Disclosure Committee, right?

A. Yes.
Q. Okay. And tell us what that is?
A. This is a -- a meeting that we hold prior to the, probably a week before we file the -- the documents with the SEC. And we have all the principal people from management there to make sure that we understand all of the things that are going on in the company.
Q. And one of the purposes of that meeting was to confirm the material in the earnings report, right?
A. Yes.
Q. To talk about issues that might impact the need for a delay, even a short delay, of the 10-K, right?
A. Yes.
Q. And Mr. Wadler simply recommended that the Disclosure Committee be delayed until after the report came in from China, right?
A. I don't recall that.
Q. Let's take a look at Exhibit 70. If you could turn to Exhibit 70, seven zero. 70.
A. Exhibit 70?
Q. It's in the big book. It's in the big book.
A. (Witness examines document.)
Q. Do you recognize Exhibit 70?
A. Yes.
Q. That's an e-mail that you were copied on; right?

A. It appears so.
Q. Dated February 23rd, 2013. Do you see that?
A. Yes.
MR. WAGSTAFFE: Your Honor, I'd move Exhibit 70 into evidence.
THE COURT: Any objection?
MR. POTTER: No objection, Your Honor.
THE COURT: It's admitted.
(Trial Exhibit 70 received in evidence)
MR. WAGSTAFFE: If we could publish that. Thank you. Just from there.
Q. You were copied on an e-mail from Mr. Wadler about the Disclosure Committee; right?
A. Yes.
Q. Let's look at the text of the memo.
Thank you, Sara.
Do you see this?
A. (Witness examines document.) Yes.
Q. You understood that Mr. Wadler was simply writing that he didn't think, since the investigation was going on, that they can have a meaningful meeting "until Pat reports back to us." That's Mr. Norton; right?
A. Yes.
Q. He simply said, "Let's hold off the meeting until Pat reports"; right?

A. Yes.

Q. That wasn't something for which you fired him to make sure he had all the ducks in a row; was it?

A. No.

Q. So Mr. Wadler was raising the issue certainly as early as February 22nd, wasn't he, well over a week before the deadline?

A. Yes.

Q. This was right around the time that you were talking to the HR person and putting him on administrative leave; right?

A. Yes.

Q. You actually don't have any memory as you sit here now of when it was that Mr. Wadler first raised his concerns about the Life Tech audit; isn't that right?

A. No. I can't remember the exact dates.

THE COURT: So find an appropriate spot.

MR. WAGSTAFFE: This is very appropriate. Thank you, Your Honor.

THE COURT: Okay. So, ladies and gentlemen, we're going to take our morning break. Come back at 10:15. Thank you very much.

(Recess taken at 10:00 a.m.)

(Proceedings resumed at 10:15 a.m.)

(Proceedings were heard out of presence of the jury:)

MR. POTTER: Your Honor, one very brief housekeeping matter, and that is, as the Court is I'm sure aware, we filed a bench memo on the case and the proxy statements. That's 245 and 349 to '57.

THE COURT: Yes.

MR. POTTER: We still think those are objectionable for the reasons stated in there. We're willing to submit on that, but Mr. Wagstaffe does tell me he's planning to seek to introduce those now, and so I wanted to renew our objection.

THE COURT: So the only thing I was thinking about on those, I assume you're not going to introduce evidence of Mr. Wadler's net worth.

MR. WAGSTAFFE: Not Mr. Wadler's, no.

THE COURT: And none of the outside, the former parties to this case, just Bio-Rad?

MR. WAGSTAFFE: Correct.

MR. LABAR: Mr. Schwartz's.

THE COURT: I'll get it right by the end of the case, I promise.

MR. WAGSTAFFE: Mr. Schwartz and the company, just the two defendants.

THE COURT: Not Mr. Schwartz. He's not a defendant with respect to the punitive damages.

MR. WAGSTAFFE: Your Honor, this is a motion for reconsideration. I'm happy to address it.

THE COURT: No, it's not.

MR. WAGSTAFFE: Oh, I'm sorry. Punitive damages are not sought against Mr. Schwartz. I've looked at your --

THE COURT: Yes. Is that right?

MR. WAGSTAFFE: It's not relevant to punitive damages, but I have the case law, if Your Honor would allow me to give it to you, because I didn't expect this to come, that his net worth and his ownership of the company go to bias, and there's case law that allows it as a defendant.

THE COURT: Well, the specifics don't necessarily have to do with it. I'm not -- that's a thinner read than we were talking about because the only argument that was given before is it went to -- it went to punitive damages.

MR. WAGSTAFFE: Your Honor, actually I think the transcript does not reflect an argument was made at all from me in that regard, but it does go to punitive damages of the company. And if I'd known this was coming, I could give you the case law that says a defendant's ownership of a company is -- well --

THE COURT: Yeah, so he owns a piece of the company; right?

MR. WAGSTAFFE: Correct.

THE COURT: The value of that ownership is a different question.

MR. WAGSTAFFE: Well, I can certainly ask what the stock -- for the net worth, I can ask the stock value.

THE COURT: Well --

MR. WAGSTAFFE: And I can ask how much stock he has.

THE COURT: All right. I'm not going to allow his -- Mr. Wadler -- Mr. Schwartz's net worth to come into this case for any purpose under 403.

MR. WAGSTAFFE: Okay.

THE COURT: I will allow the net worth of the company in that regard, on the company. When you go through the 401 -- the 10-Ks or the proxy statements, I want you to -- if you're going to put in the gross, you must put in the net.

MR. WAGSTAFFE: The liability, sure, assets and liabilities.

THE COURT: Yes.

MR. WAGSTAFFE: Oh, sure. I'll do that.

THE COURT: I want not just gross sales. There must --

MR. WAGSTAFFE: Of course.

THE COURT: They're 10-Ks. They have profit lines.

MR. WAGSTAFFE: Okay.

THE COURT: So put in the net.

MR. WAGSTAFFE: Your Honor, I --

THE COURT: On Mr. Schwartz you can put in that he owns shares. You can say the number of shares --

MR. WAGSTAFFE: Okay.

THE COURT: -- and he still owns those shares.

MR. WAGSTAFFE: Okay. And the value of the shares. I can put in what it's trading for?

THE COURT: Why?

MR. WAGSTAFFE: Because -- well, I've got the case law, Your Honor. I'm happy to do it. I didn't expect this.

THE COURT: Case law is case law. That some district judge saying X, Y, Z. I want the arguments on why it doesn't outweigh --

MR. WAGSTAFFE: Sure. I understand.

THE COURT: -- the --

MR. WAGSTAFFE: You will appreciate I didn't know this was coming.

THE COURT: I understand. But this is something --

MR. WAGSTAFFE: I understand. It's relevant to his interest in the company, which goes to bias, and the case law and logic tells us it goes to bias. It is not going to take any time. It will be one question. It really -- it certainly is not cumulative under 403.

THE COURT: What he wants to ask is how many shares of the company and what's the current share price approximately.

MR. POTTER: Right. And, Your Honor, I think the case law we cited does say that wealth is something that is unnecessary in determining liability and can be prejudicial. So I think you have --

THE COURT: Well, that's -- we're trying to narrow it.

MR. POTTER: Right.

THE COURT: Because we're trying to address that question, and certainly how much Mr. Schwartz has at stake in this room is a relevant consideration for the jury. Why shouldn't they know that he's got, you know, X millions of dollars worth of stock?

MR. POTTER: Well, I think the fact that he is a stockholder and a significant stockholder is not in dispute, Your Honor, just like it's not in dispute that the company is a big company with large amounts of revenue.

THE COURT: What percentage of the outstanding shares does he own?

MR. POTTER: I'm not sure.

THE WITNESS: Of the outstanding shares?

THE COURT: Yes.

THE WITNESS: Boy, it's -- it's complicated because --

THE COURT: I thought it would be complicated.

THE WITNESS: -- it's A and B shares.

THE COURT: Okay.

THE WITNESS: Sorry.

THE COURT: So they both trade publicly? A and B shares both trade publicly?

THE WITNESS: But I can tell you this --

THE COURT: Wait. Wait. Wait. I really want your lawyers to answer the question.

THE WITNESS: Sorry.

(Pause in proceedings.)

MR. POTTER: They both trade publicly, Your Honor.

THE COURT: Okay. And what's the outstanding -- what percentage of the A stock does he own and what percentage of the B stock does he own?

THE WITNESS: So --

THE COURT: Talk to your lawyers. Yeah.

(Pause in proceedings.)

MR. POTTER: So, Your Honor, his best estimate, and it's complicated because of the family ownership, but his best estimate is that he personally owns 1 to 2 percent of the A and about 10 percent of the B. And so I think the issue here is where does this cross the line into the prejudicial impact outweighing the probative value. The fact that he's a shareholder is not in dispute. Once you get into quantifying it --

THE COURT: What's the value of all those shares, current stock prices?

MR. POTTER: Rough estimate, about 120 million, Your Honor.

THE COURT: Okay.

MR. WAGSTAFFE: Your Honor --

THE COURT: Yeah, I'm going to allow it. I'm going to allow that limited line of questioning on Mr. Schwartz, and that is, what his share ownership is in the company and the current value of those share ownerships, and nothing further on him.

MR. POTTER: Okay. And, Your Honor, just so the record and the Court is entirely clear, the proxy statements also have financial information and salaries on all of the reporting officers, and I would submit that that also is irrelevant, and the prejudicial impact outweighs the probative value.

THE COURT: Well, they are irrelevant. I don't know what --

MR. WAGSTAFFE: Your Honor, I've been told by my colleagues it's quite relevant to the experts, but we can address this without the jury waiting because that's a public document. I can lay a foundation then. I don't need it through this witness.

THE COURT: Okay. But I'm extremely unlikely to allow any financial information about the individuals other than the limited information that currently is stated on Mr. Schwartz and the company as a whole. Individuals I'm very unlikely to do.

Don't even argue it right now because I'm not going to get into it. But you're going to put in the 401(k) in its entirety? I mean, you're going to put the 10-K in its entirety in? What are you going to do? Why are you going to do that?

MR. WAGSTAFFE: Your Honor, do you want me to argue now on that?

THE COURT: Are you going to do it now?

MR. WAGSTAFFE: No. I'm going to ask him the questions and only refresh recollection on the limited matters, and it's not going to come into evidence.

THE COURT: Fine, if you're not going to put in the actual documents.

MR. WAGSTAFFE: And I'll address it at a different time, as Your Honor requested, whether it's relevant to the experts and judicial notice.

THE COURT: Fine. Got it. Let's go.

MR. WAGSTAFFE: I don't want to waste the jury's time.

MR. POTTER: So just the narrow questions and no documents.

MR. WAGSTAFFE: I'll do it.

THE COURT: Thank you, Your Honor.

(Proceedings were heard in the presence of the jury:)

THE COURT: All right. Thank you again. I apologize for the delay, but we were working.

So, Mr. Wagstaffe, proceed.

MR. WAGSTAFFE: Thank you, Your Honor.

Q. Mr. Schwartz, you certainly came to learn that Lou Drapeau said that Sandy Wadler did a terrific job in bringing these issues to the audit company. You learned that, didn't you?

A. No.

Q. As you're sitting here now, you never heard that Lou Drapeau said that Sandy Wadler did a terrific job in bringing this -- bringing the underlying China investigation to the Audit Committee?
A. No, I don't recall that.
Q. You understand, though, that the Life Tech exposure was very important to the company; right?
A. Yes.
Q. Because the bottom line would be involving millions of dollars; right?
A. It could, yes.
Q. And that was the reason you understood Mr. Wadler wanted to continue the -- postpone the disclosure control, because of that same issue; right? The exposure to the company; right?
A. I'm not sure I see the connection.
Q. Whether or not you could get the documents -- yes or no -- that would have a big impact on the company, wouldn't it, in terms of exposure in Life Tech?
A. Yes.
Q. Now, I want to talk about the 10-K being delayed. Is it your testimony that one of the reasons you fired Mr. Wadler is because he delayed the 10-K?
A. Yes.
Q. And it was his fault; right?
A. Yes.

Q. Nobody else's; right? That's your testimony?
A. Yes.
Q. When the 10-K was about to be extended, the deadline, the company issued a press release; didn't it?
A. Yes.
Q. It told the public in the press release it needed an extension of time; correct?
A. Yes.
Q. And the press release does not say anything about the accrual amount for the Life Tech audit, does it?
A. No.
Q. And then Bio-Rad filed an application, that is a 12b-25. You know what that is, don't you?
A. Yes.
Q. That's an application to the government to extend the time to file this; right?
A. Yes.
Q. Okay. And it was important for this form to be accurate; correct?
A. Yes.
Q. And the narrative in that form lists the Life Tech accrual as only one of several reasons the extension was needed; right?
A. I don't remember the specific wording.

MR. WAGSTAFFE: 1869-20.

THE COURT: Any objection?

MR. POTTER: No objection, Your Honor.

THE COURT: Go ahead.

(Video was played in open court but not reported.)

BY MR. WAGSTAFFE:

Q. Does that refresh your recollection that the Life Tech audit was only one of the reasons of many in the government request?

A. Yeah.

Q. And the company was trying to be honest and complete in that filing; correct?

A. Yes.

Q. Now, one of the reasons -- well, strike that.

One of the issues that you instructed Mr. Wadler to resolve in 2013 was the Life Tech audit settlement issue; right?

A. Yes.

Q. And Mr. Wadler responded to that request, didn't he?

A. Yes.

Q. And you are not aware of anything that happened in the negotiations with Life Tech that was not reported to you at the time; correct?

A. Ask that again, please.

Q. Sure.

A. I just -- ask that again, please.

Q. Sure. You are not aware of anything that happened in the negotiations with Life Tech that was not reported to you at the time, right?

A. No.

Q. You're not aware of that?

A. I'm not aware of that.

MR. ASPERGER: 247/19 - 248/1.

THE COURT: Any objection?

MR. POTTER: No objection.

THE COURT: Proceed.

(Videotape played in open court, not reported.)

BY MR. WAGSTAFFE

Q. You authorized Mr. Wadler to make offers or suggestions in the negotiations, correct?

A. I was a little bit disassociated from the process.

Q. You don't remember any of the specifics of that negotiation at your deposition, did you?

A. No.

Q. You don't remember anything about the back and forth of the negotiations, right?

A. Not much.

Q. You tasked Mr. Wadler to do it and he did it, right?

A. Yes.

Q. It got done, didn't it?

A. Yes.

Q. Is one of the reasons you fired Mr. Wadler because of the amount of the Life Tech settlement?

A. No.

Q. In fact, you don't recall any of the instructions you gave to Mr. Wadler. You gave him your authority to do so, correct?

MR. POTTER: Objection. Vague.

A. I don't remember specific --

THE COURT: Overruled. Go ahead.

A. -- instructions.

BY MR. WAGSTAFFE

Q. At the end of March, 2013, Bio-Rad entered into a $12 million settlement with Life Tech, correct?

A. Yes.

Q. Mr. Wadler got that done in part, didn't he?

A. Yes.

Q. And that was $12 million to settle a $38 million claim, right?

A. Yes.

Q. And you weren't part of any of Mr. Wadler's excellent negotiations to get it from 38 to 12, are you?

A. No.

Q. In fact, when you fired him, you still thought he was the MVP of negotiations for the company, correct?

A. No.

Q. Okay. You were not aware of any negotiating step that Mr. Wadler did not discuss with you, correct?

A. Say that again.
Q. You're not aware of any negotiating step that Mr. Wadler did not discuss with you, right?
A. You're right. I'm not aware of any.
Q. Right. As far as you knew, he was keeping you up to date on the negotiations four doors down, right?
A. No.
MR. WAGSTAFFE: One moment, your Honor.
THE COURT: Mm-hmm.
(Brief pause.)
BY MR. WAGSTAFFE
Q. Well, you wrote in your notes on the meeting with Mr. Wadler and Ms. Tsingos that the $20 million offer to Life without management consultation, you weren't talking about yourself there, were you?
A. Correct.
Q. Because you were kept apprised of the negotiating steps as they went along, right?
A. Not all of them, no.
Q. But the ones you thought were pertinent -- at deposition you told us that all the pertinent -- didn't you tell us at deposition, in essence, that all the pertinent aspects in the negotiation Mr. Wadler kept you advised of, right?
MR. POTTER: Objection to form.
THE COURT: Sustained. Try it again.

BY MR. WAGSTAFFE

Q. Mr. Wadler told you, did he not, that essentially all the pertinent aspects of the negotiations with Life Tech you were apprised of, isn't that right, as far as you knew?

A. As far as I knew.

Q. And you personally recommended that the Board of Directors approve the $12 million settlement because it was the best you could achieve under the circumstances, correct?

A. Yes.

Q. It was a very good result, right?

A. No.

Q. You didn't think settling $12 million -- a $38 million claim for 12 was not a good result?

A. No.

Q. Is that why you wrote in your review on July of 2013, a month after Mr. Wadler was fired, that the outcome could have been better?

A. Yes.

Q. So was that one of the reasons you fired Mr. Wadler, because he didn't do a good enough job negotiating?

A. Yes.

Q. And I want to get it clear because I'm not sure I heard you. You're telling us and this jury under oath that at the time Mr. Wadler was fired, you did not still consider him to be the MVP of negotiations?

A. He had been for many years the MVP of negotiations. That is true.

Q. That's not my question, sir. If you could listen.

A. All right.

Q. At the time -- are you telling this jury that at the time Mr. Wadler was fired, he was not still in your mind the MVP of negotiations?

A. Yes. I think in my mind he was still.

Q. So he was the MVP and one of his home runs was the Life Tech settlement, right?

A. He managed to settle the Life Tech audit, yes.

Q. And one of the circumstances that made that $12 million a number you didn't like was because you couldn't get the documents, right?

A. It was -- that was a factor.

Q. Just like you told Mr. Cao in one of the earlier exhibits it was a factor because you didn't have all the documents to prove your case, right?

A. Yes.

Q. You never instructed Mr. Wadler to bring Brad Crutchfield or anyone else with him when Mr. Wadler met with Life Tech, right?

A. Correct.

Q. And that would include Mr. Crutchfield's subordinate Annette Tumolo, right?

A. Correct.

Q. And you didn't send any emails to the negotiation team. You let them handle it, right?

A. Yes.

Q. I want to switch to Rosanne Model. Who was Rosanne Model when she worked for the company?

A. Rosanne Model, when she worked for the company, was the Corporate Compliance Officer.

Q. She was hired in December 2011, right?

A. Yes.

Q. Are you aware that Ms. Model testified at deposition that it was you, not Mr. Wadler, who did not support her in her efforts to install an FCPA compliance program?

MR. POTTER: Objection to form, your Honor. Hearsay.

THE COURT: I will allow it.

A. Ask the question again, please.

BY MR. WAGSTAFFE

Q. Sure. You're aware, aren't you, that Ms. Model testified at deposition that it was you, not Mr. Wadler, who did not support her in her efforts to install an FCPA compliance program?

A. I'm not aware of that.

Q. Okay. When you first hired Ms. Model, she had no staff working for her at all, right?

MR. POTTER: Excuse me. Objection. Motion in limine, your Honor.

THE COURT: Sustained.

BY MR. WAGSTAFFE

Q. And she -- well, Ms. Model asked you to hire more people, didn't she?

MR. POTTER: Same objection.

THE COURT: Same ruling.

MR. WAGSTAFFE: Okay. Thank you, your Honor.

BY MR. WAGSTAFFE

Q. Let's ask about Mr. Goetz. Mr. Goetz is Bio-Rad's current CEO, Chief Executive Officer, right?

A. No.

Q. What's his job?

A. He's the Chief Operating Officer.

Q. And there was a time when you felt that he and Mr. Wadler were friends, right?

A. Yes.

Q. And the friendship cooled in 2012 because of some business interactions, right?

A. Apparently.

Q. But you personally -- where was his office?

A. John Goetz's office?

Q. Sure.

A. In what period of time?

Q. Let's say 2012, 2013.

A. That would have been in -- right next to mine.
Q. Hmm. So wait second. You are here. He's right next to you. Is he in between you and Mister -- space-wise between you and Mr. Wadler?
A. Yes.
Q. So you're all kind of there. It's like a lot of offices. You kind of hear what's going on, see what's going on?
A. We're in the same hallway.
Q. You never personally saw any change in Mr. Wadler's relationship with Mr. Goetz, did you?
A. No.
Q. And they both reported to you, right?
A. Yes.
Q. Now, you've told us that you learned that Mr. Wadler stopped talking to Mr. Goetz, right?
A. Yes.
Q. It was on a personal level, right?
A. On a personal and professional level.
Q. Let's talk about professional. But you thought you knew it was on a personal level, right?
A. I'm not sure how to distinguish between the two.
Q. Okay. Well, let's try in a moment.
But, in any event, there's no requirement at Bio-Rad that people that are friends have to stay friends away from work, right?

A. Correct.

Q. Okay. And as far as you know, as far as you know, Mr. Wadler never refused to talk to Mr. Goetz about a business matter, right?

A. As far as I know. I don't have any personal knowledge of that.

Q. All right. And you never talked to Mr. Wadler about whether he was speaking to Mr. Goetz, did you?

A. No.

Q. This didn't rise to the level of what you thought was friction between Ms. Tsingos and Mr. Wadler. This was just two friends who you thought weren't talking, but they were still doing their business together, right?

A. I don't know. I didn't have any particular thoughts on it.

Q. Well, but you certainly never talked to Mr. Wadler or Mr. Goetz about this, did you?

A. That's not correct.

Q. Well, you certainly didn't talk to Mr. Wadler about whether he was speaking with Mr. Goetz, did you?

A. No.

Q. And that was not on your radar screen because you were their supervisor for work, not for their friendship, right?

A. Say that again.

Q. Yeah. The reason you didn't talk to them is because

this -- if there was a breach in their friendship of some kind of not talking, you knew they were still talking to each another work-wise, right?
A. I -- I'm not sure.
Q. You certainly didn't fire Mr. Wadler because of his personal relationship with somebody else in the business, did you?
A. No.
Q. Now, as of December, 2012 -- do you have that date in mind, December 2012 -- you were not thinking about firing Mr. Wadler, were you?
A. Correct.
Q. That wasn't on your radar screen. Whatever problems there were before, gotten over it and started again, right?
A. Yes.
Q. That's why you gave him such a good review and handed it to him on December 20th, isn't it?
MR. POTTER: Objection. Asked and answered.
THE COURT: You can answer it one more time.
A. Yes.
BY MR. WAGSTAFFE
Q. And until you learned of his report to the Audit Committee, you never even discussed putting him on leave with Human Resources, correct?
A. Ask that again? I'm not sure I got it.

Q. Until you learned -- learned on February 20th of Mr. Wadler's report to the Audit Committee, you never even discussed putting him on leave with Human Resources, correct?

A. That's probably not correct.

Q. You certainly never talked with -- you never talked to the director of HR about it, did you?

A. I -- we may have.

MR. WAGSTAFFE: 235/15 to 24.

THE COURT: Any objection?

MR. POTTER: No objection.

(Brief pause.)

MR. WAGSTAFFE: Did I say it wrong? 235/12 to 24. Sorry, Sarah. My bad.

(Videotape played in open court, not reported.)

MR. WAGSTAFFE: Your Honor, I'd now play the two sections we talked about playing, that we've asked to be played.

THE COURT: Go ahead.

MR. WAGSTAFFE: That's, for the record, 94/16 to 96/12 and 141/22 to 142/8.

(Videotape played in open court, not reported.)

MR. WAGSTAFFE: Those are the reads, your Honor. I just have a small number of questions.

BY MR. WAGSTAFFE

Q. At the time you fired Mr. Wadler, he was 66 years old,

isn't that right?
A. Yes.
Q. If he had not been fired, he would be celebrating his 29th year at Bio-Rad right now?
A. Okay.
Q. Is that right?
A. I -- I haven't added it up, but...
Q. Okay. Fired three years ago at 66, at his 26th year. Would be about his 29th year, wouldn't it?
A. Okay. Okay. Fair enough.
Q. There have been a number of senior people who worked at Bio-Rad well past their 60's, right?
A. Yes.
Q. Jim Bennett was over 70 when he retired, right?
A. Yes.
Q. Lou Drapeau is in his 70's now.
A. Yes. He's not an employee of the company.
Q. He just retired this year, though, didn't he?
A. He's never been an employee of the company.
Q. He just retired this year for -- except for serving on Boards, right?
A. I don't -- I don't recall what his employment status has been.
Q. Dick Anderson, the former head of HR, was in his 70's when he retired?

A. No.
Q. Okay. Dave -- how old was he when he retired?
A. I don't know.
Q. Okay. Fair enough. I mean, you don't have any reason to doubt he was in his 70's, do you?
A. No.
Q. No retirement policy based on age in your company, right?
A. No.
Q. Against -- against firing people just because they are getting older, right?
A. Correct.
Q. And Dave Danby, who has the head of travel, was in his 70's when Mr. Wadler was fired; isn't that right?
A. I don't know Dave Danby's age.
Q. He's still there, isn't he?
A. Yes.
Q. He's in his 70's now, isn't he?
A. I don't know.
Q. Bio-Rad is a publicly trade -- is publicly traded on the New York Stock Exchange, correct?
A. Yes.
Q. And the stock on Friday closed at $186.91 per share, correct?
A. I don't know the exact number.
Q. Well, but it -- do you keep track of the stock prices at

least on a weekly basis?
A. No -- well, yes.
Q. If I were to tell you I looked it up and it was 186.91, do you have any reason to disagree with that?
A. No.
Q. Okay, fair enough? If you could turn to Exhibit 244.
(Witness complied.)
Q. Do you see what that is, sir? Just the front page. If you could tell us what that is?
A. Yes. It's a --
Q. The front page?
A. -- Form 10-Q.
Q. Form 10-Q. And that's the quarterly report with the continuing view of the company's financial position, correct?
A. Yes.
Q. This was filed on November 2, 2016, right?
A. Probably.
Q. If you'll turn to the fourth page of that -- by the way, that's supposed to be an accurate description of the company's financial position, right?
A. Yes.
Q. Okay. If you'll turn to the fourth page?
A. Okay.
Q. That's the balance sheet of the company, right?
A. Yes.

Q. On the first line it tells us there is -- at that time, on September 30th of 2016, there was about $417 million in cash, correct?

A. Yes.

Q. And the total assets -- I want to break it down. The total assets were 4,019,000,000; 4.019 billion, correct?

A. Yes.

Q. And the liabilities were about 1.3 billion, correct?

A. Correct.

Q. So the total value of the company was about $2.7 billion, correct?

A. Total stockholders' equity, yes.

Q. And the company just this last year did about $2.2 billion worth of sales, correct?

A. Yes.

MR. WAGSTAFFE: Now, just one moment, your Honor.

THE COURT: Go down the line items on sales, please.

MR. WAGSTAFFE: Sure, of course. Just those three items?

THE COURT: I want it to be a net.

MR. WAGSTAFFE: A net. I think I did that.

BY MR. WAGSTAFFE

Q. 4 billion minus --

THE COURT: Net income. You did the sales, so let's now do this -- let's do the net income.

BY MR. WAGSTAFFE

Q. What was the net income of the company?

A. Okay. So turning to Page 5 -- I believe that's 5, yes. So the net income of the company for what period?

Q. How about the 2016 period?

A. This is for the nine -- this is only the three and the nine months because this is a quarterly report.

Q. Well, can you estimate for us the net income for the year 2015, for a one-year-period?

MR. POTTER: Objection. Foundation.

MR. WAGSTAFFE: Well, your Honor, I'm --

THE COURT: You can ask him the question.

MR. WAGSTAFFE: Yes.

BY MR. WAGSTAFFE

Q. Can you estimate for us as the CEO of this company, tell us the net income?

A. I don't have that off the top of my head back for 2015.

Q. Well, how about 2015?

THE COURT: '16, you mean?

MR. WAGSTAFFE: '16.

BY MR. WAGSTAFFE

Q. How about 2016?

A. Yeah. I don't have that number. We have not reported that yet.

Q. You can't estimate now for us, as the CEO, the net income for that year?

A. No. We have not publicly reported that yet.

Q. Okay. You are a shareholder of the company yourself?

A. I am.

Q. And as of the -- well, what's a proxy statement?

A. A proxy statement is a -- is a statement that -- that we issue every year in connection with the annual shareholders meeting and it has certain disclosure items in it.

Q. And one of those disclosure items is the amount of stock that you would own of the company?

A. Yes.

Q. Okay. If I were to tell you in the most recent proxy statement you were identified as having approximately -- approximately 5 million shares of the stock, would that be about right?

A. No.

Q. Okay. Do you have any reason to know why your Class B stock would be identified at four-point -- almost just shy of 4.5 million on that document?

A. Because that's the total family holdings.

MR. WAGSTAFFE: Well, do we have 357 here?

Your Honor, if I can show the witness this to refresh recollection only?

A. Do you have a document here?

BY MR. WAGSTAFFE

Q. I do. I have the very form the company filed.

MR. WAGSTAFFE: May I approach, your Honor --

THE COURT: 357?

MR. WAGSTAFFE: -- with what's previously marked as 357.

THE COURT: Okay. I'm missing 357, but go ahead and show it to him.

(Whereupon document was tendered to the witness.)

BY MR. WAGSTAFFE

Q. If you'll go to Page 19 of 357, sir?

MR. POTTER: Your Honor, if I could have a moment to look?

THE COURT: Can you identify for the record what Exhibit 357 is?

MR. WAGSTAFFE: Yeah. Sure, your Honor. Exhibit 357 is a form DEF-14A, commonly referred to as a proxy statement, giving official notification to shareholders of matters to be brought to a vote, and it's filed March 31, 2016.

And I'm looking -- I'm not seeking to admit it. I'm looking at Page 19.

THE COURT: Yes.

BY MR. WAGSTAFFE

Q. Do you see Page 19 there, sir?

A. Yes.

Q. I don't want to ask about anybody else's shareholder interest. I don't want you to blurt that out. But if you'll see your own name there?

A. Yes.

Q. Does this refresh your recollection that you had 4,495,153 shares of Class B common stock as of the date of this filing?

A. That's the number that's on this page.

Q. Okay. And if you'll go to the Class A stock?

A. Yes.

Q. In this filing to the government it says 411,252 shares of stock. Do you see that?

A. Yes.

Q. And that would be, if my math is correct, 4,906,405 shares of combined Class A and B, correct?

A. Yes.

Q. And if you look down at footnote one, do you see that you were identified in this public filing as having 16.6 percent of the stock described?

A. Yes.

Q. Mr. Schwartz --

A. Hang on. Hang on. Hang on just a second.

(Brief pause.)

A. You have to understand that this table is quite complicated and I'm not sure that's the correct inference.

Q. Mr. Schwartz, you were the CEO of the company certainly in

2012, 2013 and to this day, correct?

A. Yes.

Q. And you understand, as we've asked you earlier, the company had to pay some $40 million as a result of earlier violations of the FCPA, correct? You told us that.

A. Yes.

Q. Why didn't you get fired, as the captain of the ship?

A. That's a good question.

MR. WAGSTAFFE: I have no further questions.

THE COURT: Okay.

THE WITNESS: Do you want this document back?

THE COURT: Just hang onto it.

Cross.

MR. POTTER: Thank you, your Honor.

CROSS EXAMINATION

BY MR. POTTER

Q. Good morning, Mr. Schwartz.

A. Good morning.

Q. Let me ask you first, do you have a binder of exhibits that we'll be showing you?

A. I have several binders here.

THE COURT: Please approach.

(Whereupon a binder was tendered to the witness.)

BY MR. POTTER

Q. Mr. Schwartz, you're the CEO of Bio-Rad, is that right?

A. Yes.
Q. Who founded Bio-Rad?
A. My mother and father.
Q. When did your parents start the company?
A. It was actually started in 1952.
Q. When did you start coming out to the company?
A. Well, I spent early days in a crib in the back of the company.
Q. While your parents were working there?
A. Yes.
Q. And then did you later begin working at the company?
A. Yes.
Q. When did you start working at the company either, on a part-time or full-time basis?
A. So I worked on occasion at the company during high school and college.
Q. What did you do at the company in those years?
A. I principally worked on what we call mailings. Kind of like the equivalent of the mail room.
Q. Working as part of the mail room function at the company?
A. Yes.
Q. And then -- and then after graduating from company [sic], did you come to work at Bio-Rad?
A. I did.
Q. Can you tell the members of the jury the positions that

you've had over the years at Bio-Rad?

A. Yes. I started as a systems analyst --

THE COURT: So, I'm sorry, but could you move that microphone a little closer to you? You're talking very --

THE WITNESS: I'm sorry. I'm sorry.

A. I started as a systems analyst with the company, with putting applications on the computer at that time. I did that for a number of years. Then moved into the treasury as assistant treasurer. And then eventually moved to treasurer. And I was there for, I don't know, six or eight years, I would imagine.

I was then asked to go overseas, run a manufacturing operation that we had in the U.K. I spent two years in the U.K. And then from there was asked to go to Japan. Managed the kind of sales office that we had in Japan. Did that for about two years. Came back to the United States and was appointed to the -- to run the diagnostics part of the company. Did that for, I believe, five years and then -- and then had a similar tour of duty in the Life Science part of the company for five years, before moving into my current position.

BY MR. POTTER

Q. When did you become the CEO of Bio-Rad?

A. That would have been 2003.

Q. So you mentioned two lines of business, the diagnostic side of the business and the Life Sciences side of the business. Can you tell the members of the jury, first, what the diagnostic side of the business does?

A. So the diagnostic side of the business is basically medical diagnostic tests. So we make instruments and test kits that are used in a laboratory setting.

And the areas we're focused on include areas to protect the safety of the blood supply, test for HIV, test for hepatitis. And, also, we're very well known in the area of blood typing. So tests to type your blood before it's transfused.

Also, we have products that are used in diagnosing certain other diseases. Also, very well known in the diabetic monitoring area and in -- in auto immune disease. And if you know anything about auto immune disease, it's a broad range of diseases, all the way from, say, Type 1 diabetes, all the way to celiac disease, and many in between.

Q. What is the Life Sciences division do?

A. So the Life Science part of the business, which is actually the original part of the business, we think of ourselves as being the tool provider.

So when you see in the newspaper any report of some advance in science, somebody has found some kind of maybe a key to a cure for cancer or -- or the basis of some disease, our tools or our products are behind the scenes and they are integral in trying to understand the basis of disease and the biological process. So all the way from looking at genes, proteins and cells we've got products that -- that are integral to all of that study.

Q. Has Bio-Rad won any awards?

A. Yes.

Q. What are they?

A. So over the year -- years we've, obviously, won a number of awards for innovation, for customer service; those kinds of things.

And, also, in the last half a dozen years we've also been voted one of the best places to work in northern California.

Q. How many countries does Bio-Rad do business in?

A. We do business in -- we figure about 120 companies -- countries around the world.

Q. And as the CEO, do you frequently engage in foreign travel to these -- to these other countries?

A. Yes.

Q. When you travel to foreign countries, do you travel first class, business class or coach?

A. Coach.

Q. And how often do you travel coach when going to a foreign country?

A. Well, always.

Q. And why is that?

A. It's the most economical way to travel.

Q. And is that part of a company policy at Bio-Rad, to have senior executives, including yourself, travel coach?
A. Yes.
Q. And why is that Bio-Rad's policy?
A. We are a cost conscious company. We would rather put that money into -- into more research and new products as opposed to bigger airline seats.
Q. Does Bio-Rad have a Board of Directors?
A. Yes.
Q. What does the Board of Directors do?
A. They are responsible for oversight of the company.
Q. Are you a member of the Board of Directors?
A. I am.
Q. And how long have you been on the Board of Directors?
A. Whoo... Since probably -- boy, it's been a long time. It's -- I don't remember the exact year, but it's been a long time.
Q. More than 10 years?
A. Yeah. Probably 20 years.
Q. Okay. Does Bio-Rad have an Audit Committee?
A. Yes.
Q. And what does the Audit Committee do?
A. The Audit Committee has responsibilities and oversight for ensuring that the financial statements are correct.
Q. Are you a member of the Audit Committee?

A. No.
Q. Mr. Schwartz, when did Mr. Wadler join Bio-Rad?
A. It must have been back in the 80's. I think in the late 80's.
Q. And when did he ultimately become the general counsel?
A. I don't remember the exact year, but it was a few years after that, I think.
Q. What were his duties and responsibilities as the general counsel of Bio-Rad?
A. So as general counsel, you know, that -- that position is -- you know, I guess, first of all, responsible for advising the company on -- on, you know, keeping us up to date and advising us on compliance with the laws.
In addition to that, you know, handling all the significant legal matters in the company, negotiating the large -- large deals that we had.
Also, planning the Legal function, the Legal Department, and being a member of the management team.
Q. Mr. Schwartz, when you said that the general counsel had the responsibility for advising Bio-Rad on compliance with the law, did that include the FCPA?
A. Yes.
Q. Between 1989 -- 1988 and 2009 did Mr. Wadler ever implement an FCPA compliance program at Bio-Rad?
A. No.

Q. Between 1988 and 2009 did Mr. Wadler ever provide FCPA training to Bio-Rad employees?
A. No.
Q. During those years, did Mr. Wadler ever recommend to you that Bio-Rad should implement an FCPA compliance program?
A. No.
Q. Now, I take it, though, at some point in time you spoke to Mr. Wadler about the FCPA?
A. Yes.
Q. When do you recall your first discussion with Mr. Wadler about the FCPA?
A. I don't remember the -- the first discussion, but I remember having a conversation with him in -- sometime in the mid-2000s; 2016, 2007.
Q. Can you describe that conversation?
A. So I was concerned because I had -- was reading some things in the paper about other companies who seemed to be having trouble with the Foreign Corrupt Practices Act and so I -- I was asking Sandy if this is something that we should be concerned about.
Q. And what did Mr. Wadler say in response?
A. Basically that -- that this law had been on the books for many, many years and -- and not something we should worry about.
Q. Did there come a time when Bio-Rad, though, identified a

potential FCPA problem in one of its foreign subsidiaries?
A. Yes.
Q. When did you first learn that Bio-Rad had an FCPA issue?
A. In 2009.
Q. How did you come to learn that Bio-Rad might have an FCPA issue?
A. I believe I learned it from our Chief Financial Officer.
Q. Who is that?
A. That's Christine Tsingos.
Q. How did she identify the problem?
A. She -- she said that our internal audit team had uncovered a potential issue in Vietnam and that it bore further investigation.
Q. What did the company do in response to that problem?
A. We did several things. Certainly, we informed the Board of Directors and the Audit Committee, and then we went -- we effectively hired outside counsel to kind of help us look at this situation and -- and determine what to do.
Q. Who is the outside counsel that you retained at that time?
A. This was a fellow by the name of Pat Norton.
Q. Did you review his credentials before making the decision to retain Mr. Norton?
A. Yes.
Q. And what did you learn about his background before bringing him on to conduct the investigation?

A. So -- so my understanding was that he's -- he's one of the foremost attorneys in the country on FCPA and had a lot of experience in this area.
Q. Approximately how long did Mr. Norton's investigation last?
A. All told, probably two years.
Q. Upon the conclusion of his investigation, did Mr. Norton report his results to the Board of Directors?
A. Yes.
Q. Approximately when did that occur?
A. So seems like it was in the September 2011 time frame when he made a formal report to the Board.
Q. And what did Mr. Norton find with respect to potential FCPA violations?
A. So what he found -- he basically went around the world and not only looked at Vietnam, but other jurisdictions around the world and found that we had certainly confirmed that we had the problems in Vietnam. We had a small problem in Thailand. And that there were what he called red flags in China. And that we may have a -- what we call a books and records problem in Russia. Those were the significant findings.
Q. Did Mr. Norton make any recommendations to the Board concerning Mr. Wadler's employment with Bio-Rad?
A. Yes, he did.
Q. What was his recommendation?

A. His recommendation is that Sandy should be terminated.
Q. And what was his basis for making that recommendation?
A. That --
MR. WAGSTAFFE: Your Honor, that lacks foundation. He has to ask it a different way.
THE COURT: Just rephrase that.
MR. POTTER: Certainly.
BY MR. POTTER
Q. Did Mr. Norton explain the reasons why he believed that Mr. Wadler should be terminated from the company?
A. Yes.
Q. What was his explanation?
A. His failure to identify or advise the company on the FCPA.
Q. What, if anything, did the Board recommend to you after receiving Mr. Norton's report?
A. The board concurred with Mr. Norton.
Q. And do you recall what was said to you by any particular Board members after receiving Mr. Norton's recommendation that Mr. Wadler be terminated?
A. I don't remember the specific words.
Q. Can you give us a general sense of what was conveyed to you?
A. Well, the general sense was that they had lost confidence in Sandy and felt that he should be replaced.
Q. Did you agree with the Board's recommendation that

Mr. Wadler should be replaced?
A. No.
Q. And, by the way, did you understand when they said he -- that he should be replaced, that means he be terminated from the company?
A. Yes.
Q. Did you accept the Board recommendation to terminate Mr. Wadler on that occasion?
A. No, I didn't.
Q. Why not?
A. You know, Sandy had -- I worked directly with Sandy over -- over many years. He had, obviously, been with the company a long time and -- and had been a productive kind of member of the team. And at the end of the day I wanted to give him a second chance.
Q. After discovering FCPA violations in 2009, did Bio-Rad implement for the first time an FCPA training program for its employees?
A. Yes.
Q. You heard Mr. Wadler testify last week that you allegedly stated to him: I'll be damned if Legal is going to do FCPA training. Do you recall that testimony?
A. Yes.
Q. Did you make that statement --
A. No.

Q. -- to Mr. Wadler?
A. No.
Q. And, in fact, following the discovery of the FCPA violations, did the Legal Department undertake FCPA training across the globe?
A. Yes.
Q. Did you attend any of those FCPA training sessions conducted by the Legal Department?
A. Yes.
Q. Approximately, when did those training sessions take place?
A. Those would have been in 2010, 2011 and continuing from there.
Q. And directing your attention to the sessions that were conducted by the Legal Department, can you tell us where the Legal Department conducted FCPA training sessions during the 2009, 2010 time period?
A. So these were at -- basically, at regional sales meetings where we had -- where we pulled in all of our regional salespeople in Asia, in Europe, in the Americas, in Latin America.
Q. How many of these FCPA training sessions did you personally attend?
A. Oh, I don't know. At least a half dozen.
Q. Did Mr. Wadler ever attend any of these FCPA training

sessions?
A. No.
Q. Did there come a time when Legal transferred the responsibility for conducting these training sessions to another section within the company?
A. Yes.
Q. And who conducted the training sessions thereafter?
A. That was Roseann Model.
Q. What was her position?
A. The Corporate Compliance Officer.
Q. Who conducts the FCPA compliance training today?
A. It's the Chief Compliance Officer and his team.
Q. Who is that?
A. That's Matt Warner.
Q. Now, Mr. Schwartz, did you ever communicate to Mr. Wadler that you had concerns about his failure to institute an FCPA compliance program?
A. Yes.
Q. When did you communicate these concerns to Mr. Wadler?
A. That would have been in 2010.
Q. And did you prepare a Performance Review of Mr. Wadler that reflected your concerns about the failure to institute an FCPA compliance program?
A. Yes.
MR. POTTER: Your Honor, if the witness may see

Exhibit 85?

(Witness complied.)

BY MR. POTTER

Q. Mr. Schwartz, do you recognize this document?

A. Yes.

Q. Is this the document in which you expressed your concerns about Mr. Wadler's failure to institute an FCPA compliance program?

A. Yes.

MR. POTTER: Your Honor, move to admit.

MR. WAGSTAFFE: Your Honor, we discussed this in limine in scope --

THE COURT: I wouldn't admit the entire thing.

MR. POTTER: Subject to the provisions that we discussed.

THE COURT: I'll admit the portions of it that we discussed.

MR. POTTER: Yes. Okay. Thank you, your Honor.

MR. WAGSTAFFE: Your Honor -- thank you, your Honor.

(Trial Exhibit 85 -limited portions received in evidence)

(Document displayed.)

BY MR. POTTER

Q. Mr. Schwartz, let me ask you, first of all, is this -- just tell us what this document is?

A. This is a Focal Performance Review for the years 2009 and 2010.
Q. And when did you provide -- did you provide this review to Mr. Wadler?
A. Yes.
Q. The first paragraph of the performance review states as follows:

"As general counsel, one key responsibility is to assure that we are aware of and comply with the laws of the countries in which we do business. The FCPA discoveries are a real black eye for the company and will end up costing us many millions of dollars. While ultimately it is the responsibility of every manager to comply with management guidelines, Legal could have done a much better job making the organization aware of the risks and guiding us in compliance."

Did I read the first paragraph correctly?
A. Yes.
Q. Did you provide this review to Mr. Wadler?
A. Yes.
Q. And did you go over this particular paragraph with Mr. Wadler during the review?
A. Yes.
Q. Why did you write this paragraph?

A. Basically just what it says. I mean, it was a tremendous embarrassment to the company that we had this situation; and, you know, with a little more proactivity around this, we could have avoided huge problems for the company.

Q. In the review you note that the FCPA discoveries will cost many millions of dollars.

Do you see that?

A. Yes.

Q. How many millions of dollars did it ultimately cost Bio-Rad?

A. We paid the government $55 million.

Q. Looking at the back of the bottom page, there is a section entitled "Opportunities for Improvement."

A. Mm-hmm.

Q. There is a -- it's sort of in the graded, shaded area at the very top. Do you see that?

A. Right. Right.

Q. And then does the last paragraph read as follows:

> "More proactive Legal focus. The FCPA mess gave the company a real black eye. With the breadth of our international operations, Legal should have been more assertive or inquisitive, making sure we were in compliance"?

Did I read that correctly?

A. Yes.

Q. And did you provide that review and feedback to Mr. Wadler when you gave him this performance review?
A. Yes.
Q. Why did you write that paragraph?
A. Basically, again, because of the mess that we had found ourselves in. I just wanted to reinforce that this was an important factor and something that needed a lot of improvement.
Q. You specifically write that Legal should have engaged in a more proactive Legal focus. What did you mean by that?
A. That it's -- you know, it's one of the basic responsibilities of Legal to guide us in compliance with laws.
Q. And was it your belief that Legal had failed to do that with respect to the FCPA?
A. Yes.
Q. You also note in that paragraph that Bio-Rad apparently enjoys a breadth of international operations.
A. Yes.
Q. Why was the fact that Bio-Rad had international operations relevant to your assessment that the general counsel had given the company a black eye with respect to FCPA?
A. With 60 percent of our sales kind of being international, you know, you're doing business in high-risk countries or higher risk countries than in the United States.
Q. So given the nature of your business, did you believe that

for a company like Bio-Rad, it was particularly important to have a FCPA compliance program?
A. Yes.
Q. Did there come a time when you learned that federal prosecutors wanted to meet with you and Mr. Wadler for a *Tone at the Top* meeting?
A. Yes.
Q. Where was that meeting expected to take place?
A. In Washington, D.C.
Q. Who from Bio-Rad was expected to attend the meeting?
A. From Bio-Rad, it would have been Sandy Wadler and myself.
Q. And any attorney representing Bio-Rad at that meeting?
A. Yes.
Q. Who would that be?
A. That would have been Doug Greenburg.
Q. And who would you be meeting in Washington, D.C.?
A. This would have been people from the Department of Justice and the Securities and Exchange Commission.
Q. What did you understand was the purpose of the *Tone at the Top* meeting?
A. The purpose of the meeting, as I understood it, was to -- to kind of review our kind of past compliance with the FCPA and -- and then to kind of look at the measures we had taken and were taking going forward.
Q. What had your general counsel done in terms of past

compliance?

MR. WAGSTAFFE: Your Honor, overbroad.

THE COURT: Well, why don't you be a little more precise.

BY MR. POTTER:

Q. Up to the period of 2009 before the violations were detected, what had your general counsel done in terms of past compliance efforts?

A. Nothing.

Q. Who told you that the government wanted to meet with you and Mr. Wadler to discuss the *Tone at the Top* issues?

A. I recall it was Sandy.

Q. When did he tell you that?

A. Oh, must have been in the -- I want to say it's kind of in the October-November time frame of this would be 2011.

Q. What did he tell you when he shared this with you?

A. That we were expected to go to Washington, D.C., and to meet with the -- with the SEC and the DOJ.

Q. What was your reaction to this upcoming *Tone at the Top* meeting?

A. So I was -- I was, of course, ready to go, you know, to be able to finally go and explain where we were and -- and especially what we'd done to improve our situation.

Q. What was Mr. Wadler's reaction to this meeting?

A. He seemed to be fairly -- fairly nervous about going to

this meeting.
Q. Did you have any other discussions with Mr. Wadler about the *Tone at the Top* meeting --
A. Umm...
Q. -- particularly as it relates to scheduling?
A. Oh, yes. Yeah, I was -- I did.
Q. Could you describe that part of the conversation?
A. So -- so I had a meeting scheduled in -- I needed to be in Washington, D.C., in the middle of December, and it would have been very convenient for me to -- to package this trip so that we could get that all done together.
Q. Did you propose to Mr. Wadler that the *Tone at the Top* meeting be held in mid-December?
A. Yes.
Q. And did you ever hear back from him on that scheduling issue?
A. No.
Q. Following this conversation with Mr. Wadler concerning the *Tone at the Top* meeting, did you observe any changes in his behavior in the workplace?
A. Yes, I did.
Q. Could you describe to us at a high level as to how his behavior changed after this conversation?
A. He seemed to be a lot more withdrawn is the first thing that I observed.

Q. And were there other behavioral changes during the 2013 time period that you either observed or learned about?

A. Yes.

Q. Could you describe those for us?

A. So in the 2013 time frame, you know, again, it was -- you know, he seemed to be having a hard time performing his job, doing his job. He became more withdrawn, and he became abusive towards certain people in the company and, you know, no longer really an effective part of the management team.

Q. Mr. Schwartz, could you look at Exhibit 100, please.

A. (Witness complied.) Yes.

MR. ASPERGER: I show this as not admitted yet.

THE COURT: Karen?

MR. POTTER: I believe 100 is in evidence, your Honor.

THE CLERK: Yes, I believe it is admitted.

MR. POTTER: Thank you for your caution, Ken.

Q. Mr. Schwartz, I believe that you testified that these notes reflected a meeting that you had with Mr. Wadler on March 6, 2013; is that right?

A. Yes.

Q. Okay. At the very start of this note, you write:

> "It was a meeting for me to sit down with Sandy to try and clear the air about what was going on with Sandy and that we were obviously not communicating very well."

Do you see that?
A. Yes.
Q. Tell me, if you would, why you were meeting down with him to try to clear the air and to improve the working relationship between you and your general counsel?
A. We had gotten really disconnected. He wasn't -- he wasn't talking to me, and -- and, you know, I wanted to see if I could basically repair the relationship.
Q. As of May 2013, as reflected in these notes, was your relationship strained with the general counsel?
MR. WAGSTAFFE: Your Honor, misstates the date.
THE COURT: March.
BY MR. POTTER:
Q. I'm sorry. March 2013.
A. Say that again.
Q. Yes. I'm sorry.
As of March 6, 2013 was your relationship strained with your general counsel as reflected in these notes?
A. Yes, I believe so.
Q. The second paragraph reads as follows:
"Sandy says I have resented him for 10 years as evidenced by salary review history with increases averaging 1 percent and not timely. Stated that he is paid half of what his peers are."
Do you see that section?

A. Yes.

Q. And did you resent Mr. Wadler when you sat down with him on this occasion on March 2013?

A. No, of course not.

Q. And had you resented Mr. Wadler for 10 years when you sat down with him on March 6, 2013?

A. No.

Q. Had you ever told Mr. Wadler that you had resented him?

A. No.

Q. Had you ever told him over the course of the last 10 years that you resented him?

A. No.

Q. Were you surprised to learn during this meeting that your general counsel was of the view that you harbored a decade-long resentment against him?

A. Yes.

Q. The document also reflects a concern about his salary. Do you see that?

A. Yes.

Q. Was this an ongoing complaint of Mr. Wadler concerning his salary?

MR. WAGSTAFFE: Objection. In limine motion, your Honor.

THE COURT: Sustained.

BY MR. POTTER

Q. With respect to this motion you go on to say:

"He ranted on about a lack of communication and honest dealings behind his back. No detail."

Do you see that?

A. Yes.

Q. Can you describe what you meant by that note?

MR. WAGSTAFFE: Your Honor, I'm concerned about the in limine order being violated improperly.

THE COURT: Let's take it a step at a time. Why don't you ask him a leading question instead.

MR. POTTER: Sure.

Q. Do you recall Mr. Wadler ranting during this meeting?

A. Yes.

Q. And do you recall him ranting in an untethered way about communication and honesty?

A. Yes.

Q. Do you recall him ranting about things going on behind his back; but when asked as to what he was talking about, he couldn't or didn't provide any detail as to what he was getting at?

A. That's correct.

Q. Do you recall there was sort of a paranoid ranting about a conspiracy against him, but he didn't provide any detail as to who was in the conspiracy and what it involved?

A. Right.

Q. And did this sort of ranting and talk about some sort of conspiracy, did it give you concern?

A. Yes.

Q. Why?

A. Well, I mean, it seemed to be a -- kind of a big change for Sandy. All of a sudden everybody was -- was against him somehow and that -- it just -- it just was a very strange conversation.

Q. And with respect to the third page of this document, there is an issue about paranoia?

A. Yes.

Q. Do you see that?

A. Yes.

Q. Did you interpret his paranoia as being a legitimate concern of a general counsel who can't get documents, or did you consider it to be the rantings of somebody who is talking about a conspiracy but is not providing any details or meaning about the nature of the conspiracy?

A. So I considered it to be the latter.

Q. And why was that?

A. There were no details. It just seemed kind of totally out of the blue.

Q. Did Mr. Wadler ever identify to you who the members of the this conspiracy were?

A. No.
Q. Did Mr. Wadler ever explain to you how the members of the conspiracy were out to get him?
A. No.
Q. Did you have some concerns during this meeting that your general counsel is ranting about a conspiracy and believing that you're harboring a resentment of him for 10 years?
A. So say that again. Sorry.
Q. Yes. Did you have some concerns leaving this meeting that your general counsel is expressing the view that you have had resentment of him for 10 years and you've harbored -- and there's been a conspiracy directed at him that he can't describe in any meaningful detail?
MR. WAGSTAFFE: Your Honor, that's leading.
THE COURT: All right. Try it in a non-leading fashion. Thank you.
BY MR. POTTER
Q. Did this meeting, as reflected in these notes, cause you concern about Mr. Wadler's emotional and psychological well-being?
A. Oh, yes.
Q. Did your relationship with Mr. Wadler improve after you met with him in March of 2013?
A. We never fully got back on track. It was just like he'd said his piece and seemed like life went on.

Q. And in addition to the personal experience that you described, did you observe, personally observe, Mr. Wadler acting inappropriately with your colleague Christine Tsingos?
A. Yes.
Q. Who is Christine Tsingos?
A. Christine Tsingos is the Chief Financial Officer.
Q. When did this episode take place?
A. This would have been late March 2013.
Q. Who was present during this outburst?
A. Myself, obviously Christine and Sandy, certain members of the finance team, and some members of the Legal team. I just don't have their names.
Q. Can you describe what happened at that meeting?
A. So -- so Sandy became kind of extremely animated and aggressive and directed towards Christine, pounding on the table and kind of visibly shaking saying, "I need documents. I need documents, and nobody is providing me any documents."
Q. Did you believe that he was acting appropriately professional during this meeting?
A. No.
Q. Did you have concerns about his emotional well-being when he was acting in the manner you just described?
A. I did.
Q. And tell us why.
A. It -- it was very out of character for Sandy and, you

know, not in keeping with the decorum that we -- we have around the company.

Q. Did you say anything at the meeting after Mr. Wadler had the outburst you just described?

A. Yeah. I told him, "Calm down, Sandy. You know, I'm sure we can -- we can figure out how to get these documents for you."

Q. Following this outburst, did Ms. Tsingos come to see you to voice her concerns about Mr. Wadler's behavior?

A. Yes, she did.

Q. When did that meeting take place?

A. It must have been probably a day or two after.

Q. Where did that meeting take place?

A. My office.

Q. And what did you and Ms. Tsingos discuss on that occasion?

A. So on that occasion she was -- she was -- she was worried about her safety and, you know, said she was -- she was worried for her personal safety and, you know, was considering getting a alarm put on her house because of Sandy and his aggression.

Q. What did you say in response to Ms. Tsingos?

A. So, you know, I told Christine that I didn't feel that Sandy was a physical threat.

Q. And why did you tell her that?

A. You know, I had worked with Sandy for, you know, 10 years or more and I just didn't think that was his nature.

Q. Notwithstanding providing that assurance to Ms. Tsingos, did you direct an evaluation as to whether or not Mr. Wadler was, in fact, an actual threat to Ms. Tsingos?

A. Yes. We did the HR Department -- I asked the HR department to do a threat assessment.

Q. Why did you ask the HR Department to make that assessment?

A. Because we wanted to make sure that -- that Sandy was not a threat.

Q. And who was the individual in the HR Department who made that threat -- undertook that threat assessment?

A. That's Colleen Corey.

Q. What did she ultimately find?

A. She found that, you know, while there were some factors that put him what we call kind of the medium category, that it didn't tip the scales enough to say that he was an imminent threat.

Q. And while Mr. Wadler was found to be only a medium threat, did Ms. Corey make a recommendation to you on that occasion as to whether Mr. Wadler should be terminated from the company?

A. Yes, she did.

Q. What was her recommendation?

A. She thought that he should be terminated.

Q. And did she say why? Can you tell us why she believed he should be terminated?

A. These behaviors, his pattern of behavior.

Q. In early 2013, did Ms. Corey express concerns to you about how Mr. Wadler treated her during a conversation about his salary?

A. Yes.

Q. What did Ms. Corey tell you?

A. She recounted that Sandy had talked to her and was screaming at her about his salary, and -- and how it was very unfair and -- and he had been treated poorly.

Q. Did Ms. Corey communicate to you that he had acted in an abusive and unprofessional manner during that telephone conversation?

A. That was my impression.

Q. Did Ms. Corey tell you about any other occasions when Mr. Wadler acted in an abusive and belligerent manner towards another colleague?

A. Yes.

Q. And when did that episode take place?

A. I don't recall the exact timing of that. I believe it was in late March.

Q. And that's -- late March is when Ms. Corey conveyed to you that Mr. Wadler had acted in an abusive and belligerent manner to another colleague?

A. Yes.

Q. What did she tell you in response to that episode?

A. That they were -- they were meeting with -- with Sandy and

this other colleague having to do with the French Legal organization and the reporting relationships there.
Q. Who was the other colleague?
A. The other colleague is Ann Madden.
Q. Did Ms. Corey describe to you how Mr. Wadler acted in an abusive, belligerent fashion during that meeting?
A. Yes.
Q. What did she tell you.
A. That Sandy basically came unglued and was very abusive towards -- towards Ann and -- and that apparently Ann left the meeting quite shaken.
Q. Following the description of this conduct, did the head of HR, Ms. Corey, make a recommendation to you as to Mr. Wadler's employment status with the company?
A. Well, once again, she -- she kind of brought up the issue of whether we should terminate Sandy.
Q. Did she recommend to you that you should terminate Mr. Wadler on that occasion?
A. Yes.
Q. Did you follow that recommendation?
A. No, I didn't.
Q. And why not?
A. I -- you know, I was still hoping that we could figure out what was wrong with Sandy and -- and that somehow get back on track.

Q. Who is John Goetz?
A. John Goetz is the Chief Operating Officer of the company.
Q. Did Mr. Goetz ever express to you concerns about Mr. Wadler's behavior?
A. Yes.
Q. When did he express those concerns to you?
A. That's around the end of 2012.
Q. What did Mr. Goetz share with you?
A. That -- that Sandy had basically stopped talking to him.
Q. Did he describe why?
A. He thought it had to do with the reporting relationship for the French Legal team.
Q. Prior to the occasion when Mr. Wadler stopped talking to Mr. Goetz, how long had they worked together?
A. Oh, they've worked together for, I don't know, 10, 15 years.
Q. And what was the nature of their relationship during that time period?
A. They had probably one of the best relationships of anyone in the company.
Q. And what do you mean by that?
A. That John Goetz had figured out a way to work with Sandy and -- and they worked together on many issues, mostly related to the diagnostics business which he ran prior to coming into the COO position.

Q. Mr. Schwartz, I'd like to ask you some questions about Mr. Wadler's performance as a general counsel in the last six months of his employment, and I'd like to start with the 10-K. Could you just tell the jurors briefly what a 10-K is?
A. The 10-K is a report, an annual report, that we submit to the SEC basically outlining the kind of the results of the year and the current status of the company.
Q. When did Bio-Rad begin working on the 2012 10-K?
A. It would probably have been in January.
Q. Could you describe the process for preparing a 10-K?
A. The process is to, first of all, close the books, get all the numbers collected from around the world, decide what all the pieces of the puzzle are, and put that all together.
Q. Did Mr. Wadler have any responsibilities with respect to the filing of Bio-Rad's 10-K?
A. Yes.
Q. What were his responsibilities?
A. There's a section in the 10-K that talks about legal proceedings.
Q. Did Mr. Wadler have an obligation to identify accruals that might arise as reflected ultimately to be recorded on the 10-K?
A. Yes, associated with those legal proceedings.
Q. And I should probably ask. What is an accrual?
A. Okay. So an accrual is an estimate that we make of a

future liability that's -- that's, yes, for future liability.

Q. And what responsibilities did Mr. Wadler have specifically with respect to disclosing accruals to the company as part of this process?

A. So he was obligated to submit his estimate of those accruals in a timely basis so that we could put this document together and submit it on time.

Q. What problems did Mr. Wadler cause with respect to Bio-Rad's preparation and filing of the 10-K in 2013?

MR. WAGSTAFFE: Objection, your Honor. That calls for a narrative.

THE COURT: Why don't you rephrase that.

MR. POTTER: Certainly. Yes, your Honor.

Q. Did Mr. Wadler cause a problem with respect to the filing of the 10-K?

A. Yes.

Q. What was the problem?

A. The problem was that he was not timely in -- in providing the accrual information that was necessary to file the 10-K.

Q. So when you say "not timely," I want to just sort of put that in a context.

Let me ask you first: What is an earnings release?

A. So an earnings release is -- is a -- I mean, we put out a press release and we have a call, an investor call, probably about -- usually about a week before we file the official

document with the government.
Q. And in 2013 did Bio-Rad issue an earnings release in February of 2013?
A. Yes.
Q. Prior to the release or the issuance of that earnings release, had Mr. Wadler identified any issue with respect to the Life Tech accrual?
A. No.
Q. And what, if any, problems were occasioned by the failure of Mr. Wadler to notify the Finance Department of the amount of the Life Tech accrual?
A. We were in a very embarrassing position where we had -- we had already announced our earnings to the public and now -- now Sandy was coming with a change to those financial statements.
Q. What was your reaction to Mr. Wadler's demand to increase the accrual? Did you have any issue, let me ask you first of all, with respect to the amount of the increase of the accrual?
A. Yeah, we had no issue with the amount.
Q. Did you have an issue with respect to the belated disclosure of the accrual?
A. Yes.
Q. Again, why is that?
A. Again, it was a very embarrassing situation and -- and, you know, the auditors see this as a sign of dysfunction in the company.

Q. Did Bio-Rad file its 10-K on time?
A. No.
Q. Was this a problem for the company?
A. It was.
Q. And why did -- why was it a problem?
A. Because we -- you know, it's embarrassing to not file your documents on time. We had never had a situation where we did not file on time.
Q. In the 24 years that Mr. Wadler had worked at Bio-Rad at that point, had he ever before raised an issue about an accrual after an earnings release?
A. No.
Q. What did you do after Bio-Rad missed filing its 10-K on time?
A. So -- so I instituted a -- a meeting every morning.
Q. And when you say you instituted a meeting every morning, let me ask you some questions about that. First of all, were these mandatory meetings?
A. Yes.
Q. And what were the purpose of these mandatory meetings?
A. The purpose was basically to get -- to pull together everything we needed to get the 10-K filed.
Q. Did you direct members of your management team to attend these daily meetings for the purpose of working together to get the 10-K on file?

A. Yes.
Q. Who did you direct to attend these meetings?
A. This was Sandy Wadler and his team or parts of his team, and Christine Tsingos and parts of her team.
Q. And did you specifically direct Mr. Wadler to attend these mandatory meetings?
A. Yes.
Q. How many mandatory meetings did you ultimately end up having before the K was filed?
A. We had eight or ten of these meetings.
Q. How many of these mandatory meetings did Mr. Wadler actually attend?
A. I think he attended two or three.
Q. Did he ever provide you with any justification for missing these mandatory meetings?
A. No.
Q. In your 10 years as the CEO of Bio-Rad at that point in time, had you ever before ordered mandatory daily meetings to resolve a company crisis?
A. No.
Q. And, by the way, with respect to the other people who you directed to attend these mandatory meetings, what was their attendance like?
A. They were -- they were in attendance.
Q. For all the meetings?

A. Yes.
Q. How did you view Mr. Wadler's failure to attend these mandatory meetings?
A. Obviously very disappointing, and it wasn't clear why he was not attending.
Q. Mr. Schwartz, I would like to ask you some questions about Bio-Rad's filing of a 10-Q in May 2013. Do you recall Bio-Rad making a 10-Q filing in May of 2013?
A. Yes.
Q. Could you tell the members of the jury what a 10-Q is?
A. A 10-Q is the quarterly report that we're obligated to send to the SEC as a public company.
Q. What's the general process of preparing a 10-Q?
A. It's the same as a 10-K. Close the books, get all the information together, and file the report.
Q. Mr. Schwartz, last week Mr. Wadler's counsel played a clip from your deposition in which you were asked if Mr. Wadler did anything in May 2013 that led to his termination. Do you recall that?
A. Yes.
Q. In the video clip that was shown to the jury you responded:

"No, not one specific incident."

Do you recall that?
A. Yes.

Q. Did the video clip that Mr. Wadler's counsel showed to the jury last week capture the entirety of your answer to that question?

MR.WAGSTAFFE: Your Honor, hearsay and Rule 32(a)(6) in the process.

THE COURT: You can ask that in a different way.

MR. POTTER: Certainly. Your Honor, at this time I'd ask simply that we play 94:7 to 94:15.

MR. WAGSTAFFE: Your Honor, you've ruled on that. I object.

THE COURT: What did I rule?

MR. POTTER: That we could play it.

THE COURT: Then you can play it.

(Videotape played in open court, not reported.)

BY MR. POTTER

Q. And directing your attention to the 10-Q, that filing occurred in May of 2013; is that right?

A. Yes.

Q. And was Mr. Wadler expected to identify accruals related to the 10-K in May 2013 in a timely manner?

A. Yes.

Q. Did he fail to do that again?

A. Yes.

Q. Can you tell us how that problem arose?

A. So -- so it was the day before, luckily, we were to release earnings he came with an assertion that the accrual should be raised.

Q. And did you ever learn that he was aware of this accrual issue days before and only provided the information after a chance meeting with your CFO?

MR. WAGSTAFFE: Your Honor, that's leading.

THE COURT: Sustained.

BY MR. POTTER

Q. What problems were caused by Mr. Wadler's disclosure of the accrual literally the day before the Q was -- the earnings release was set to be announced?

A. So -- so the problem is that -- that it's -- it's not like there is just one number in the financial statements that has to be changed, but it -- you have to book the entry and it has to roll through the entire financial statements, and the -- including the tax portion of the financial statements. So it's a -- it's an involved process. It's not something that you can do quickly.

Q. Had Mr. Wadler ever in the 24 preceding years raised an accrual issue the day before an earnings release?

A. No.

Q. Did you have any discussions with Ms. Tsingos following this episode that you just described?

A. Yes.

Q. And Ms. Tsingos, she's the CFO?

A. Yes.

Q. How soon after the filing did Ms. Tsingos come to talk to you about Mr. Wadler and his involvement with respect to that filing?

A. So I don't remember the exact timing or days, but very, very shortly or right in this same time frame.

Q. What did Ms. Tsingos say to you?

A. That basically that she couldn't go on like this; that, you know, this was kind of no way to run a railroad and, you know, it -- we were at too much risk.

Q. What did you understand her to be referring to when she said, "I can't go on like this. There is too much risk doing business like this," or words to that effect?

A. So, you know, she signs the 10-K and the 10-Q, and you know, she's the responsible person that signs these documents and basically is opining that these documents are correct. And when you have these last-minute things, there's always a risk that -- that you might not get everything correct.

Q. And did Ms. Tsingos make clear to you that the last-minute thing that she was referring to on that occasion related to Mr. Wadler's decision to raise this accrual issue the day before the earnings release?

A. Yes.

Q. What did you tell Ms. Tsingos in response?

A. I said I understand, and that was about it.

Q. Mr. Schwartz, are you familiar with an audit that became known as the Life Tech audit?
A. Yes.
Q. What was the nature of that audit?
A. So this had to do with the -- the royalties that we paid to Life Technologies for some intellectual property that we had licensed.
Q. Who at Bio-Rad was responsible for responding to this audit?
A. Principally the Accounting Department.
Q. And did Mr. Wadler ever discuss the Life Tech audit with you?
A. Yes.
Q. And what did he discuss with you?
A. Basically that this -- this -- that the -- that Life Tech was going to perform this audit and -- and then we would -- we would see what the results were.
Q. And did he ask you to assist in getting documents from third-party companies in China?
A. Not when this audit started.
Q. Later in the 2012 time period did he make that request of you, roughly 2012?
A. Yes, once we'd gotten a report from them.
Q. And so you tried to get documents for Bio-Rad in response to the audit; is that right?

A. Yes.
Q. Okay. So there was a line of questions put to you about audit rights and whether or not Bio-Rad had the ability to get documents from distributors in China through audit rights. Do you remember that line of questioning?
A. Yes.
Q. That line of questioning was presented to you during this trial; correct?
A. Yes.
Q. While you were the CEO of Bio-Rad and Mr. Wadler was the general counsel of Bio-Rad, did Mr. Wadler ever tell you that "We should exercise our audit rights to get documents from these third-party companies in China"?
A. No.
Q. Did Mr. Wadler, as the general counsel of Bio-Rad, ever initiate legal proceedings to enforce Bio-Rad's supposed audit rights with respect to these third-party distributors in China?
A. No.
Q. Did he ever suggest to you that Bio-Rad retain a Chinese law firm to bring an action to enforce supposed audit rights to get these documents?
A. No.
Q. And was any legal action ever commenced by Bio-Rad at Mr. Wadler's direction or suggestion to enforce supposed audit rights for third-party distributors in China?

A. No.
Q. Did you come to learn that, in fact, Bio-Rad China maintained very, very good documents with respect to these transactions?
MR. WAGSTAFFE: Your Honor, I hate to interrupt. That's leading. Objection.
THE COURT: Try again, please.
BY MR. POTTER
Q. Did you come to learn what the quality of Bio-Rad China's own documents were during the course of this matter?
A. Yes.
Q. And what was the quality of Bio-Rad's own records?
A. Apparently the quality of Bio-Rad's records were very good.
Q. Okay. Mr. Schwartz, Mr. Wadler also testified that in early November 2012, he came to you and told you that he had just gotten a document that he said looked like bribery. Do you recall that testimony?
A. Yes.
Q. And Mr. Wadler also testified that in response you said something to the effect of, "I know. I've already talked about these documents with Chris Benson, the Life Science controller." Do you recall that testimony?
A. Yes.
Q. Did that conversation ever take place?

A. No.
Q. Did you ever make that statement to Mr. Wadler?
A. No.
Q. And just out of curiosity, was Chris Benson even the Life Science controller?
A. No.
Q. Do you recall that Mr. Wadler also testified that in January 2013 he raised bribery concerns with you and your response was, "I've already talked to Bob Thompson about this and have nothing to add"? Do you recall that testimony?
A. Yes.
Q. Did that conversation with Mr. Wadler in January of 2013 ever happen?
A. No.
Q. Did you ever tell Mr. Wadler that you had any knowledge of bribery payments in China?
A. No.
Q. Following the Life Tech audit, did Life Tech send Bio-Rad a demand for royalties?
A. Yes.
Q. Approximately when did Life Tech send that demand?
A. It was --
MR. WAGSTAFFE: Your Honor, it's hearsay.
THE COURT: To his knowledge.

BY MR. POTTER

Q. Approximately when did Life Tech send that demand, to your knowledge?

A. I believe it was in the middle of 2012.

Q. Did that demand for royalties initiate settlement discussions between Life Tech and Bio-Rad?

A. Yes.

Q. Did Mr. Wadler play any role in the Life Tech settlement negotiations?

A. Yes.

Q. What was his role?

MR. WAGSTAFFE: Your Honor, that's overbroad. Objection. Calls for a narrative.

THE COURT: Overruled.

THE WITNESS: So he was -- he was in charge of kind of the communication and the negotiation between Bio-Rad and Life Tech.

BY MR. POTTER

Q. How did Mr. Wadler execute his responsibilities with respect to the Life Tech settlement negotiations?

A. So he would meet with the Life Tech people in trying to work with them on that issue.

Q. Did you develop a concern about the way in which Mr. Wadler conducted the Life Tech settlement negotiations?

A. Yes.

Q. What was the nature of your concern?
A. Well, the concern was that the -- the internal management team was not kept informed and was not kind of made part of the negotiations, even though they ultimately would be responsible for it in their P&Ls.
Q. And when you say the internal management team was not in the loop on these negotiations, who are you referring to?
A. These are the management team in the Life Science group.
Q. Any particular individuals?
A. Brad Crutchfield, Annette Tumolo. Those are the principal people.
Q. Did Mr. Crutchfield and Ms. Tumolo express concerns to you that they were not part of the loop in the process of negotiating this settlement?
A. Yes.
Q. And did that cause you concern that they weren't part of this process?
A. Yes.
Q. Why?
A. Again, ultimately, they -- they had to pay for it and -- and -- yeah, ultimately they had to pay for it and should have been and maybe could have helped in the process.
Q. And tell us how they might have been able to help Bio-Rad forge a better settlement position by being part of the ongoing negotiations and supplying information to Mr. Wadler?

A. Well, that's just it. I think they -- they may have been able to provide better information to Sandy.
Q. And is that because they actually had knowledge of the products at issue?
A. Yes.
Q. Did you ultimately agree to a settlement recommended by Mr. Wadler?
A. Yes, we did.
Q. Why did you agree to that settlement if you thought that the process was flawed in reaching that settlement?
A. So, you know, we were in a situation where Life Tech was pressing very hard to get it resolved, and it was presented as kind of -- by Sandy as, "Look, it's -- this is where we are. Kind of take it or leave it." And we didn't feel we had much wiggle room at that point.
Q. Did Mr. Wadler at that point convey to you basically that this was their best and final offer?
A. Something to that effect, yes.
Q. Near the end of 2012, did you conduct a performance review for Mr. Wadler?
A. Yes.
Q. Could you look at Exhibit 86, please.
(Document displayed.)
A. Okay.
Q. What is this document?

A. This is a Focal Performance Review for the year 2011.
Q. Looking at the last page of the document, you see it's dated December 20th, 2012?
A. Yes.
Q. What does that date signify?
A. It signifies the date we actually sat down and talked about this.
Q. What does the focal year on the first page of the document signify?
A. That's the year for the performance that we're evaluating.
Q. Does this evaluation cover Mr. Wadler's performance in 2012?
A. No.
Q. And I take it, just given the nature of time travel, it doesn't cover his performance or conduct in 2013; is that correct?
A. Correct.
Q. Did you give this review to Mr. Wadler?
A. Yes.
Q. And on the last page of the performance review you write:

"Opportunities for improvement overall."

And does the passage state as follows:

"While the Legal team always seemed to be working hard and have no lack of work, around the company the image of Legal could be improved. We need to find better" -- "We need to better find the source of discontent and a cure"?

Do you see that?

A. Yes.

Q. What does that statement refer to?

A. The Legal team was not well -- well appreciated around the company. It was seen as what was called the black hole of Legal, and things would go in, they would never come out. Basically poor service levels was the issue.

Q. Did Mr. Wadler's title change after receiving this review?

A. Yes.

Q. What did his title become?

A. It went from vice-president to executive vice-president.

Q. Why did Mr. Wadler's title change on that occasion?

A. This was part of a titling scheme that we were instituting across are the company.

Q. And how many other people received new titles as part of this new titling scheme that you have described?

A. About 40 people in total I think.

Q. Across the company?

A. Yes.

Q. Okay. Now, Mr. Schwartz, you previously testified to a meeting in March 2013 when you sat down with Mr. Wadler to try to get him back on track. Do you recall that testimony from earlier?

A. Yes.

Q. In addition to that meeting, were there other occasions when you expressed concerns to Mr. Wadler that he was not acting appropriately in the workplace?

A. Yes.

Q. I'd like you to refer to Exhibit 84.

(Document displayed.)

Q. And in particular I direct your attention to 16055, which I believe is in evidence. That single page.

A. Yes.

Q. Okay. Mr. Schwartz, are these talking points that you prepared in advance of a meeting with Mr. Wadler and Christine Tsingos in February of 2013?

A. Yes.

Q. The first bullet point reads:

"Tired of enduring the dysfunctional relationship you have."

Do you see that?

A. Yes.

Q. What did you understand that -- what did you mean to convey by that point?

A. Basically that Sandy and Christine seemed to be at each other's throats all the time, and -- and it was -- it was not helping the company function.

Q. And in this meeting in February of 2013, did you convey to

Mr. Wadler that he and Christine Tsingos were at each other's throats and it wasn't helping the company?

A. Yes.

Q. Was this a significant issue for you as the CEO that the Legal Department is at the throat of the CFO, the Finance Department, and vice-versa?

A. Yes.

Q. And why was that a significant problem for the company at that point in time?

A. Well, because these two departments need to work closely together to make sure that we get our filings done, among other things.

Q. There's a third bullet point which reads:

"Heard all the arguments. Have to" --

Why don't you read it, if you don't mind.

A. Okay.

Q. You can read it better than I can I bet.

A. Basically it was:

"I've heard all the arguments. On the one hand, you, Christine, says you have to know everything. And, Sandy, you say you have to protect the information. And therein lies the problem."

Q. And what had Mr. Wadler in the past said about his need to protect his information?

A. Just that it was -- you know that it -- all that information was legal information and that -- and -- and that it didn't need to be shared with anybody else.

Q. Now, Mr. Schwartz, the last numerical bullet point says:

"If you two cannot find a way to bridge the gap, I have no option but to find someone who will."

Do you see that?

A. Yes.

Q. And did you convey that information to Mr. Wadler and Ms. Tsingos?

A. Yes.

Q. And what did you convey with respect to that particular talking point?

A. I mean, this was -- this was my way of telling them, "Look, if you can't figure out how to work together, I'm going to find somebody else to take your positions."

Q. And did you tell them that during this meeting?

A. Yes.

Q. Did you make it clear to Mr. Wadler and Ms. Tsingos that if they didn't repair this relationship, one of them could be shown the door?

A. I think that was pretty clear.

Q. And did you tell them that?

A. Yes.

Q. Words to that effect?

A. Yes.

Q. And what, if anything, did they say in response?

A. They didn't have much to say.

Q. Please take a look at what's previously been marked -- admitted as Exhibit 27.

THE COURT: So, Mr. Potter, if you want to find a spot.

MR. POTTER: This would be a good time, your Honor.

THE COURT: Great. Thank you.

So, ladies and gentlemen, we're going to take our lunch break. Please come back here at 1:15.

Please remember the admonition. Don't talk to anyone about this case, don't communicate about the case, and don't let anyone communicate with you about the case.

Thank you very much.

(Jury exits the courtroom at 12:12 p.m.)

THE COURT: Okay.

MR. POTTER: Thank you, your Honor.

THE COURT: Thank you.

MR. WAGSTAFFE: Thank you, your Honor.

(Whereupon at 12:12 p.m. proceedings
were adjourned for noon recess.)

AFTERNOON SESSION **1:19 p.m.**

(Proceedings were heard out of presence of the jury:)

THE COURT: Okay. Shall we get our friends?

(Proceedings were heard in the presence of the jury:)

THE COURT: All right. Welcome back.

Mr. Potter.

MR. POTTER: Thank you, Your Honor.

BY MR. POTTER:

Q. Mr. Schwartz, before we get underway, I just want to clarify a misstatement that I may have made. I think I indicated to you in a question that the *Tone of the Top* conversation that you had with Mr. Wadler was in 2011. In fact, was that conversation with Mr. Wadler in 2012?

A. Yes.

Q. Okay. There was questioning this morning by counsel about Jim Bennett. Do you recall that questioning?

A. Yes.

Q. And there was questioning about whether Jim Bennett was known as a yeller in the company. Do you recall that?

A. Yes.

Q. When did Jim Bennett join Bio-Rad?

A. Sometime in the 1970s.

Q. And when did he leave Bio-Rad?

A. In 2000 -- early 2000s. 2002-2003 as an employee.

Q. And during the period of time between the '70s through

2002, were you the CEO of the company?

A. No.

Q. During that period of time, did you have any supervisorial authority over Mr. Bennett?

A. No.

Q. Did you have any authority to curb or prevent him from yelling in the company during that period of time from the '70s to 2002?

A. No.

Q. Aside from Mr. Wadler, had any other management member been identified to you as engaging in abusive and hostile conduct to another Bio-Rad employee?

A. No. Not -- no.

Q. So Mr. Wadler represents the only time that somebody came to you and made a complaint that someone was acting abusive and in a belligerent manner to another Bio-Rad attorney?

MR. WAGSTAFFE: Your Honor, just to form. This is leading.

THE COURT: Overruled.

Answer the question, but you can answer --

THE WITNESS: Could you ask the question again? Sorry.

BY MR. POTTER:

Q. Sure. Is Mr. Wadler the only individual to whom you were appraised or informed was engaging in abusive or belligerent conduct to another employee at Bio-Rad while you were the CEO of the company?

A. Yes.

Q. Can we look at Exhibit 84, please, which I think was on the screen just before we left?

THE COURT: 16055?

MR. POTTER: Yes. Exactly, Your Honor.

THE WITNESS: Oh, okay.

BY MR. POTTER:

Q. There's a reference in there to insubordination re February 13-15 trip. Do you see that?

A. Yes.

Q. First of all, did you write the word "insubordinate" there because you were intending to document your ultimate termination of Mr. Wadler?

A. No.

Q. Why did you write the term "insubordination" as reflected on that document?

A. Just that I thought it was an active insubordination.

Q. And can you tell us specifically what you considered to be an active insubordination with respect to Mr. Wadler's trip to New York City?

A. So as his supervisor -- in our process in Bio-Rad as a supervisor, I need to approve his travel, and he's obligated to bring his travel requisitions to me for approval.

Q. And so with respect to that reference "insubordination," are you referring to his failure to seek travel approval for the trip?
A. Yes.
Q. And did you have any issue with respect to Mr. Wadler going to the Audit Committee to voice his FCPA concerns?
A. No.
Q. Could you look at, please, at Exhibit 27.
A. (Witness examines document.)
Q. This is an e-mail from you to Colleen Corey on February 22nd, 2013; is that right?
A. Yes.
Q. And in the e-mail you write (reading):
"Sandy has been acting a little bizarre lately."
Do you see that?
A. Yes.
Q. Could you tell us what you meant by that?
A. That his -- his kind of activities, his actions were out of character as opposed to the last 10, 15 years that I'd worked with him.
Q. And how so?
A. Just the interactions, lack of interactions, just a number of things that seemed to be odd.
Q. You go on to write (reading):
"I'm still trying to understand the whole picture. I

may want to put him on an administrative leave, for which I would need your advice and help."

Did I read that correctly?

A. Yes.

Q. And why did you consider putting Mr. Wadler on administrative leave?

A. Well, in cases like this where it's affecting the whole organization, it's not uncommon to do, to kind of take somebody out of the environment and try to figure out what the problem is.

Q. And what, if any, personal concerns did you have for Mr. Wadler during this difficult period?

A. Well, I really didn't know what was going on with him. I didn't know if he was having some kind of a personal problem, or -- I just didn't know what it was. So, you know, I was just thinking, "Okay. If we take him out of this environment, you know, will that be a way to kind of regroup and see if we could fix the problem?"

Q. And did --

A. I was concerned about Sandy.

Q. Did you believe that giving him administrative leave might give him the opportunity to work out whatever problems he was experiencing?

MR. WAGSTAFFE: Your Honor, excuse me for interrupting. That's leading.

THE COURT: Sustained. Let's do this again.

BY MR. POTTER:

Q. Did you ultimately put him on administrative leave?

A. No.

Q. Why not?

A. You know, I thought -- I thought that we could get things worked out.

Q. By the way, with respect to your consideration of placing him on administrative leave, is administrative leave at Bio-Rad, is that paid leave?

A. Yes.

Q. Mr. Schwartz, Mr. Wagstaffe indicated to you that you had learned about the Audit Committee investigation two days before you sent this e-mail to Ms. Corey. Did you have an opportunity to review documents over the weekend to refresh your recollection as to when you actually learned about the Audit Committee investigation?

A. Yes.

Q. Did you learn about the Audit Committee investigation on February 13th or 14th?

A. Yes. Something in that time frame.

Q. Are there e-mails that reflect that?

A. Yes.

Q. Did your awareness of Mr. Wadler's Audit Committee report over a week later play any role in your consideration at this time of possibly putting Mr. Wadler on administrative leave?

A. No.

Q. Mr. Schwartz, did there come a time in 2013 when the Bio-Rad Board of Directors for the second time recommended that you terminate Mr. Wadler?

A. Yes.

Q. When did the board make that recommendation?

A. In the April time frame.

Q. Did any particular board member articulate to you the reasons why Bio-Rad should terminate Mr. Wadler?

A. Yes.

Q. Who was that?

A. That was Lou Drapeau.

Q. What did Mr. Drapeau say?

A. Basically that they continue to feel that they'd lost confidence in Sandy, and continue to feel that he was -- you know, that we needed to change general counsel, basically.

Q. And did they indicate how or why they had lost confidence in Mr. Wadler?

MR. WAGSTAFFE: Your Honor, that misstates the evidence, "they."

MR. POTTER: I can ask more broadly.

THE COURT: Mr. Drapeau.

BY MR. POTTER:

Q. Mr. Drapeau.

A. Sorry. Could you ask --
Q. Yeah. Sure.
Did Mr. Drapeau express his reasons at least as to why he had lost confidence in Mr. Wadler as the general counsel of Bio-Rad?
A. Yes.
Q. And what did he say?
A. Certainly the activities around the K and the Q, and his -- what he was learning about the behavior and the dysfunctional relationships that he had in the company.
Q. Did the Bio-Rad Board of Directors as an entity recommend to you that Mr. Wadler should be terminated from the company in April of 2013?
A. Yes.
Q. And upon hearing in April 2013 that the board was recommending Mr. Wadler's termination, what did you do in response to that recommendation?
A. So, of course, I took it under advisement. I think that, you know, this is -- this is the second or maybe even the third time that they're pushing this issue. I think I took this a lot more seriously.
Q. Did you begin in April evaluating whether or not it was time to sever the relationship with Mr. Wadler?
A. Yes.
Q. Can we take a look, please, at Exhibit 87.

A. (Witness examines document.)
Q. Mr. Schwartz, do you recognize this document?
A. Yes.
Q. And I want to ask you, this is a Focal Performance Review for Mr. Wadler for focal year 2012; is that correct?
A. Yes.
Q. And as you sit here today, do you have an actual memory of typing up the information that is found on Exhibit 87?
A. No. No, I don't have an actual memory.
Q. Can you tell the jurors what your typical practice is for preparing performance reviews?
MR. WAGSTAFFE: Your Honor, this lacks foundation.
THE COURT: Overruled.
THE WITNESS: So my typical practice is to take the objectives from the last review period, and usually I -- I would print these off and take them with me when I travel. And then I would -- I would kind of make notes, basically script the review on paper, and then eventually come back and put it in this form.
BY MR. POTTER:
Q. As part of your practice for preparing performance reviews, would you typically prepare handwritten notes before the information is typed into the form?
A. Yes.
Q. And do you believe that you followed that practice with

respect to this particular form?

A. You know, I don't have any specific memory of that. I mean, that was my normal practice.

Q. Can you -- and fair enough.

Can you recall, though, any instance where you prepared a performance review just straight from typing without first undertaking the step of preparing handwritten notes to capture your thoughts?

A. No, I can't.

Q. Mr. Wagstaffe asked you several times last week if it was your practice to keep significant or important handwritten notes in your file, and you agreed. Do you recall that testimony?

A. Yes.

Q. Is it your practice to keep handwritten notes -- it is your practice, isn't it, to keep handwritten notes of important meetings or talking points? Is that true?

MR. WAGSTAFFE: Your Honor, that is a leading question. Objection.

THE COURT: Sustained.

BY MR. POTTER:

Q. What is your practice for maintaining handwritten notes reflecting meetings with employees?

A. I do keep handwritten notes for what I consider to be important meetings with employees.

Q. Is it -- do you -- is it your practice, though, to keep handwritten notes of the notes that ultimately are memorialized in performance reviews?
A. No.
Q. Why not?
A. Because I've already memorialized it, and it's just kind of a duplicate piece of paper.
Q. Mr. Schwartz, is Exhibit 87 a finished performance review?
A. No.
Q. Directing your attention to the column marked "Rating." Do you see that?
A. Yes.
Q. If we can have the entirety of that.
Now, what is expected to be included in the column marked "Rating," Mr. Schwartz?
A. So this is the -- basically the scoring or the grade that you give to each of the -- each of the performance goals.
Q. And how many performance goals are listed on Exhibit 87?
A. In the Section B there are five listed.
Q. And of those five performance goals on Exhibit 87, how many, if any, have an actual performance rating?
A. None.
Q. And how is that indicated on the form that that section has not been assigned a performance rating?
A. "N/A."

Q. And is the grade the most important part of the form because it denotes the quality of their performance?
A. Yeah. It is a very important part, yes.
Q. Take a look at the section of the document indicated "Performance Indicators."
A. Yes.
Q. Does the performance indicator section typically receive a numerical rating?
A. Yes.
Q. And with respect to Exhibit 87, does this form have a numerical rating?
A. No.
Q. And what's the significance of the "N/A" in that particular column for that topic?
A. It obviously hasn't been completed.
Q. Why is it important with respect to this performance review that there are no grades for Mr. Wadler's performance?
A. Because it has not been completed.
Q. The box at the bottom of the form is for Mr. Wadler's overall rating. Do you see that?
A. (Witness examines document.) Yes.
Q. And is this the box where the final grade would be entered onto the form?
A. Yes. It populates automatically.
Q. Is there a final grade given on this particular form?

A. No.
Q. Is the final grade important in a performance review?
A. Oh, yes.
Q. And why in this instance is there no final grade for this performance review?
A. Because this is not complete.
Q. Did you ever provide this review to your HR director to include in Mr. Wadler's personnel file?
A. No.
Q. Now, have you had a chance to review this document in anticipation of today's testimony?
A. Yes.
Q. The document includes on the first and the second page a number of characterizations of Mr. Wadler's performance; correct?
A. Yes.
Q. Is there anything on this first page that is factually inaccurate?
A. No.
Q. Take a look at the second page. In terms of the characterization of his work and the characterization of the job that he has performed, is there anything on that page that is factually inaccurate?
A. No.
Q. Mr. Schwartz, you talked earlier about some of the

problems associated with Mr. Wadler's late disclosure of the accrual in connection with the 10-Q filing in May 2013. Do you recall that?

A. Yes.

Q. Does this April-dated performance review in any way, shape, or form reflect the problem with the May accrual?

A. No.

Q. Does it reflect in any way the conversation with Ms. Tsingos in May of 2013 where she said essentially "it's him or me"?

A. No.

Q. Is that reflected in this form?

A. No.

Q. Is there anything in this form from May on -- is there anything beyond April 14th that reflects poor performance by Mr. Wadler?

A. No.

Q. By the way, this document, does it even include all the reasons that you actually terminated Mr. Wadler?

A. No.

Q. Around this time in the weeks after the April 2011 board meeting, did you meet with Ms. Corey to discuss Mr. Wadler's termination?

A. Yes.

Q. When did that meeting take place approximately?

A. Probably early May, best of my recollection.
Q. What did you discuss on that occasion?
THE COURT: Which year is this, Counsel?
MR. POTTER: I'm sorry.
Q. Can you give us a year, please.
A. 2013.
Q. And can you just tell us what you discussed with her in May of 2013?
A. We discussed initiating the process.
Q. And why were you initiating the process of terminating Mr. Wadler on that occasion?
A. Because it -- I mean, it takes time to get everything prepared.
Q. Okay. There was a clip last week indicating that you made the decision -- in your deposition you indicated you made the decision to terminate Mr. Wadler in March or April. Do you recall later clarifying in your deposition that that's when you started the process, but you ultimately made the final decision in June?
A. Yes.
Q. And approximately when did you make that final decision?
A. I mean, the final-final decision came actually following the Davis Polk report.
Q. Did there come a time when you learned that Mr. Wadler had made a report to the Bio-Rad Audit Committee?

A. Yes.
Q. How did you learn that?
A. From Lou Drapeau.
Q. And can you give us the date you learned that?
A. Maybe February.
Q. Let me see if I can help you. Can you look at Exhibit 325, please.
A. 325? Okay. Hang on a second.
Q. Sure.
A. (Witness examines document.) Yes. Okay.
Q. Do you recognize this document?
A. Yes.
Q. Is this a document that you made in the regular course of business?
A. Yes.
Q. Was it your regular business to keep documents of this type?
A. Yes.
Q. Was it made at or near the time of the events depicted in the document?
A. Yes.

MR. POTTER: Your Honor, move to admit.

THE COURT: Any objection?

MR. WAGSTAFFE: No objection, Your Honor.

THE COURT: Admitted.

(Trial Exhibit 325 received in evidence)

BY MR. POTTER:

Q. Mr. Schwartz, the e-mail begins -- the e-mail is from you; correct?

A. Yes.

Q. To, is that Lou Drapeau's e-mail address?

A. Yes, it is.

Q. And the date of this e-mail is February 13th, 2013?

A. Yes.

Q. And it's in response to an earlier e-mail from Sandy Wadler to you. Do you see that?

A. Yes.

Q. And in the e-mail Mr. Wadler writes (reading):

"Norman. I'll be out of the office" --

MR. WAGSTAFFE: Your Honor, excuse me for interrupting. One of the jurors has his hand up.

THE COURT: Oh.

A JUROR: I'd ask if you stand to the side of the screen so we can see.

MR. POTTER: Yes. Oh, I'm sorry. Sorry about that.

MR. WAGSTAFFE: Excuse me, Your Honor.

THE COURT: Yes.

MR. POTTER: Sorry. Thank you.

THE COURT: Thank you.

BY MR. POTTER:

Q. Okay. So the e-mail reads (reading):

"I'll be out of the office on February 13th, February 14th, February 15th working on a matter at the request of the Audit Committee. As a result, I will not be able to take the vacation I have scheduled for February 14th and February 15th. I will instead take these days off on February 28th and March 1st."

Do you see that?

A. Yes.

Q. Okay. And then you in turn forwarded that e-mail to Mr. Drapeau; is that right?

A. Yes.

Q. And was your purpose in forwarding that to Mr. Drapeau to find out what was going on?

A. Yes.

Q. And did Mr. Drapeau respond to your e-mail with a telephone call?

A. Yes.

Q. And how soon after sending that e-mail to him on February 13th did he call you back to tell you what's going on?

A. I believe it was the next day.

Q. What did he tell you?

A. He told me that -- basically, that Sandy had come with concerns about what was the business in China, and that they'd authorized him to travel to New York to engage another firm to take a look at this.

Q. Did Mr. Drapeau keep this at a high level in terms of explaining to you what happened?

A. Yeah, fairly high level.

Q. Okay. Did the Audit Committee -- did you come to understand that the Audit Committee went out and hired an outside law firm to investigate Mr. Wadler's allegations?

A. Yes.

Q. What law firm did the Audit Committee retain?

A. That was the firm of Davis Polk.

Q. Did Steptoe & Johnson also assist in the investigation?

A. Yes.

Q. So there were two law firms investigating Mr. Wadler's allegations?

A. Yes.

Q. When the Audit Committee is conducting an investigation like this, what role are you expected to play?

A. I pretty much stay on the sidelines.

Q. You weren't involved in the day-to-day monitoring of the investigation; is that fair to say?

A. Yes. That's fair.

Q. Did you receive a telephone call from Patrick Norton on February 27th in which he summarized his preliminary views on Mr. Wadler's allegations?

A. Somewhere in that time frame. I don't know the exact date.

Q. What did Mr. Norton tell you?

A. I think at that time he said that they'd had a preliminary look at the allegations and couldn't find any wrongdoing.

Q. Had Mr. Norton traveled to China to look into the allegations before this telephone call?

A. Yes.

Q. And what was your reaction to Mr. Norton's initial assessment that there were no FCPA issues?

A. Well, I was certainly very relieved.

Q. Can I ask you to take a look at Exhibit 95?

A. (Witness examines document.) Okay.

Q. Is this an e-mail that you sent to Mr. Norton on March 1st, 2013, in the ordinary course of business?

A. Yes.

MR. POTTER: Your Honor, move to admit.

THE COURT: Any objection?

MR. WAGSTAFFE: Other than what we said before, no objection, Your Honor.

THE COURT: Okay. Then it's admitted.

(Trial Exhibit 95 received in evidence)

BY MR. POTTER:

Q. Mr. Schwartz, the first question I want to ask you is, you say (reading):

"I can't tell you how much I appreciate your help with China."

What do you mean by that?

A. Well, you know, he'd -- we'd kind of pulled him out on very short notice from whatever else he was doing and asked him to go to China kind of at the drop of a hat to help with this.

Q. The second paragraph reads (reading):

"The good news is that we do not appear to have any FCPA issues and the contract administration shortfalls are something we can fix."

What did you mean by that?

A. Well, basically what it says, is that we didn't appear to have any FCPA issues.

Q. The next paragraph reflects that you're grateful for his insights as someone who has lived and worked in China and understands the cultural and communication nuances. What did you mean to convey by that paragraph?

A. Just -- just, again, it was part of thanking him for his participation and, you know, we appreciated his learned experience.

Q. By "learned experience," did you understand that he had specialized knowledge about how business was operating in China?

A. Yes.

Q. And then you also share with him the gratitude that he took time out of his busy schedule on short notice to jump on a plane and fly out to China and look into this stuff. What are you referring to there?

A. Basically this fellow is very busy. He's got a lot of things on his plate but, you know, he put those things aside to help us out, and it was much appreciated.

Q. Could I ask you to look at Exhibit 99, please.

A. (Witness examines document.) Okay.

Q. Mr. Schwartz, does Exhibit 99 reflect a telephone conversation that you had with Mr. Drapeau on March 6, 2013?

A. Yes.

Q. Were these notes generated in the ordinary course of business?

A. Yes.

Q. Was it your practice to maintain notes like this in the ordinary course of business?

A. Yes.

Q. And were the notes prepared at or near March 6, 2013?

A. Yes.

MR. POTTER: Your Honor, move to admit.

MR. WAGSTAFFE: Again, Your Honor, with the reservation, we have no objection.

THE COURT: Admitted.

(Trial Exhibit 99 received in evidence)

THE WITNESS: Did you say March 5th or 6th?

BY MR. POTTER:

Q. March 6th.

A. Okay. Good.

Q. I hope I said March 6th.

MR. POTTER: Your Honor, if I can come around here again?

THE COURT: Yes. Go ahead. Please.

MR. POTTER: Thank you.

Q. So with respect to these handwritten notes, the top entry indicates it's a -- is this a call or a meeting with Mr. Drapeau on March 6th?

A. This is a call.

Q. Okay. And the very first line indicates -- why don't you read the first paragraph, if you could, because you can read it better than I can.

A. The one that starts "Davis Polk"?

Q. No. Well, what's highlighted.

A. Oh, "Lou called"?

Q. Yeah. Right.

A. (As read)

"Lou called to download a recent telecon with Davis Polk, Bill Kelly SF," and I didn't get the other name, "from Washington D.C."

Q. Who was Bill Kelly?

A. Bill Kelly is a Davis Polk partner in the San Francisco office.

Q. The document in the next line -- excuse me -- in the middle of the next paragraph there's a statement that reads (reading):

"Davis Polk feels Sandy setting himself up as whistleblower."

Do you see that?

A. Yes.

Q. Did Mr. Drapeau convey to you that Davis Polk had the opinion that Mr. Wadler was setting himself up to be a whistleblower?

A. Yes.

Q. And what do you recall him saying about that?

A. Basically just that, that that's the -- that's the download that he got from Davis Polk.

Q. The very end of the document contains a section entitled "Lou's Comments." Do you see that?

A. Yes.

Q. And the notes reflect that (reading):

"We may need to get Davis Polk to do more work before Sandy signs off on FCPA."

Do you see that?

A. Yes.

Q. And in point of fact, did Davis Polk after March 6th, 2013, conduct a further investigation of the FCPA allegations?

A. Yes.

Q. Did Davis Polk travel to China to investigate Mr. Wadler's allegations?

MR. WAGSTAFFE: Your Honor, objection. Hearsay.

THE COURT: To your knowledge.

BY MR. POTTER:

Q. To your knowledge did --

A. To my knowledge, yes. It was my understanding.

Q. And did Davis Polk also travel to Hercules to interview personnel in Hercules about Mr. Wadler's FCPA allegations?

A. Yes.

Q. Mr. Schwartz, Mr. Wadler testified last week that you came to him in early March 2013 and asked him, "What can I do to make this all go away?" Do you recall that testimony?

A. Yes.

Q. Did you ever make that statement to Mr. Wadler?

A. Absolutely not.

Q. Are you positive you didn't make that statement to Mr. Wadler?

MR. WAGSTAFFE: Your Honor, that's argumentative. He's been asked -- it's also asked and answered.

THE COURT: Overruled.

BY MR. POTTER:

Q. Are you positive you didn't make that statement?

A. I am positive.

Q. And, by the way, at the time of Mr. Wadler's supposed conversation with you in March 2013, were you aware that the government had already been informed about these FCPA allegations?

A. Yes.

Q. Mr. Schwartz, did you attend a board meeting in June 2013 that was also -- in which Davis Polk made a presentation concerning the findings of their investigation?

A. Yes.

Q. Who attended that board meeting?

A. It was Bio-Rad board members and people from the Davis Polk firm, and I believe there were folks from the Latham Watkins firm on the line as well.

Q. What was the purpose of the board meeting?

A. The purpose of the meeting was to get the final report from Davis Polk.

Q. And were you present when Davis Polk rendered that final report?

A. Yes.

Q. And what was the conclusion of the final report?

A. The conclusion of the final report was that there were no FCPA problems that had been uncovered as part of this investigation.

Q. And did Ms. Beamon at that meeting describe for you what she ultimately found conducting this review in terms of the quality and the nature of the allegations?

MR. WAGSTAFFE: Your Honor, that's overbroad given the length of the report and the length of the meeting.

THE COURT: Why don't you focus in on something.

MR. POTTER: Yes.

Q. Did Ms. Beamon during the course of the meeting indicate her views as to the credibility or the substance of the allegations raised by Mr. Wadler?

A. Yes.

Q. What did she convey during the meeting?

A. She conveyed during the meeting that the allegations seemed to be kind of without basis, without substance; that, in fact, when Sandy came to discuss this with them in New York, that he had a very hard time articulating what the issue was and what the facts were, and apparently had done no diligence to substantiate any of the allegations.

Q. And how did that information affect you in your ultimate decision to terminate Mr. Wadler?

A. Well, so for me this was -- this was I guess what you might call the last piece of the puzzle. I mean, for me it was at this point obvious that Sandy was a loose cannon and, you know, we didn't know what he would do next.

Q. The fact that Mr. Wadler had gone to the Audit Committee to make an Audit Committee report, did that fact alone influence your decision at all to terminate Mr. Wadler?

A. Oh, no. No. No.
Q. Mr. Schwartz, did you personally terminate Mr. Wadler?
A. Yes.
Q. Was Ms. Corey present for that termination?
A. Yes.
Q. Is it Bio-Rad's standard practice to have an HR person present for an employee termination?
A. For these kinds of terminations, yes.
Q. Okay. Could you look at what's been previously admitted into evidence as Exhibit 88?
A. (Witness examines document.) Okay.
Q. I believe you testified that this was the script that you prepared in anticipation of terminating Mr. Wadler?
A. Yes.
Q. When you prepared this script, were you intending to document in that exhibit all of the reasons you were terminating Mr. Wadler?
A. No.

MR. WAGSTAFFE: Your Honor, just, again, for the record, that's leading.

THE COURT: Sustained.

BY MR. POTTER:

Q. What was your purpose in preparing this particular script?
A. The purpose was to basically tell Sandy that we no longer needed his services.

Q. On the second page you write (reading):

"The board does recognize your service you've given to the company, and I want to work out an amicable separation from the company."

Do you see that?

A. Yes.

Q. And you go on to write (reading):

"To that end, the company wants to enter into an agreement with you that provides for you to retire as an employee but have an ongoing consulting relationship for two years."

Is that what that says?

A. Yes.

Q. Okay. Did you offer him a severance package on this occasion?

A. Yes.

Q. What was the amount of the severance package?

A. It was about $650,000 in total.

Q. And did you give Mr. Wadler time to consider whether he would accept that severance package?

A. Yes. That's our normal practice.

Q. Did you also expect, given his penchant for negotiation, that he would negotiate from there to receive a better severance package?

MR. WAGSTAFFE: Your Honor, excuse me for interrupting. That's leading.

THE COURT: Sustained.

BY MR. POTTER:

Q. What was your expectation when you made that initial offer to Mr. Wadler of a $650,000 severance package?

A. Well, okay. So Sandy is the master negotiator. The expectation was that he would probably come back and ask for more.

Q. And without getting into the substance of any ensuing conversations, did, in fact, the parties engage in negotiations over the amount of the severance package?

A. Yes.

MR. WAGSTAFFE: Your Honor, objection. Relevance.

THE WITNESS: Oh, sorry.

MR. WAGSTAFFE: Relevance and I could explain 408.

THE COURT: Overruled.

BY MR. POTTER:

Q. You can answer.

A. Yes.

Q. And how long a period of time did those negotiations ensue, if you know?

A. Six months. It's just a guess.

Q. Why did you terminate Mr. Wadler on a Friday afternoon?

A. That's fairly common.

Q. And did you do anything to prepare the office for

Mr. Wadler's termination?
A. So we suggested that maybe Christine who worked -- who sits next-door to him might want to leave a little early.
Q. Why did you suggest that?
A. Just to avoid any confrontation or embarrassment for Sandy.
Q. You had previously resisted a number of recommendations from Mr. Norton, the board on two occasions, the head of HR, to terminate Mr. Wadler. Why in June of 2013 did you finally come to the conclusion that it was time to terminate him?
A. Again, you know, the Davis Polk report informed me that he was -- he didn't have a basis for any of this stuff, and it was just, for me, kind of the -- kind of the final piece.
Q. And how, if at all, did Mr. Wadler's conduct and performance during his last six months at Bio-Rad impact on your decision to terminate him in June?
A. That was a big factor.
Q. Was it all these factors taken together?
A. Yes, of course.
Q. Was it a painful decision for you to ultimately terminate your colleague?
A. Sure. Sure.
Q. Why?
A. Well, I worked with Sandy for, you know, 10, 15 years and, again, he was a valuable contributor over that period of time.

MR. POTTER: Thank you, Your Honor. Nothing further.

THE COURT: Mr. Wagstaffe.

MR. WAGSTAFFE: Give me a moment, Your Honor.

THE COURT: Sure.

MR. WAGSTAFFE: Mr. Potter, you forgot your coffee here.

MR. POTTER: Oh. Thank you.

MR. WAGSTAFFE: If you can just give me one minute.

(Pause in proceedings.)

REDIRECT EXAMINATION

BY MR. WAGSTAFFE:

Q. Would you turn to Exhibit 133, sir?

A. (Witness examines document.)

Q. Let's start where you ended, which is the Davis Polk meeting, June 4th, 2013. Right?

A. Yes.

Q. Take a look at Exhibit 133.

A. (Witness examines document.) I see it here.

Q. Do you see it? Do you see, if that refreshes your memory, that that was a Davis Polk PowerPoint used at the very meeting you were discussing; right?

A. Yes.

Q. And you were present at that meeting; correct?

A. Yes.

MR. WAGSTAFFE: Move this into evidence, Your Honor.

THE COURT: Any objection?

MR. POTTER: No, Your Honor.

THE COURT: It's admitted.

(Trial Exhibit 133 received in evidence)

BY MR. WAGSTAFFE:

Q. Turn to the third page. These are the PowerPoint slides that Davis Polk presented at the meeting you say put the puzzle pieces together; right?

MR. POTTER: Objection. Misstates his testimony.

THE COURT: Overruled.

THE WITNESS: So I'm not sure which is page 3 in your --

BY MR. WAGSTAFFE:

Q. Oh, I'm sorry. Look at page -- I'm sorry -- page 6, the third page says page 6 down at the bottom. Do you see that?

A. I can hardly read these page numbers.

Q. Down at the bottom, 6, third page in.

A. And it starts at the top "Introduction"?

Q. Sure. That's it.

A. Okay.

Q. You understood that Davis Polk had advised you in this PowerPoint presentation -- we'll look at the third-to-the-last bullet point on the top. On the top. It says "the issues raised" do you see up and above? Do you see that?

They told you they'd looked at all Mr. Wadler's documents and they felt an investigation was appropriate, didn't they? To use their language, "The China issues warranted further investigation"; correct? That's what they told you, didn't they?

A. This is the overview and scope, yes.

Q. Answer my question. They told you that looking at the set of documents Mr. Wadler presented to the company, those documents warranted further investigation; correct?

A. (Witness examines document.)

Q. Correct? You see that right there in the report that was given to you, don't you? It's the -- it starts with "With respect." Do you see that?

Ms. Guzman, you can get us there, "With respect to the remaining issues."

Do you see that?

A. (Witness examines document.)

Q. Do you see it on the screen there, sir?

A. Okay. Okay. Yes.

Q. That's correct, isn't it?

A. It is.

Q. They looked at Mr. Wadler's documents. They didn't think about three-piece suits and it's all silly. They said it warranted further investigation; right?

A. Yes.

Q. And they indicated that they were going to do that investigation; right?

A. Yes.

Q. And that investigation was very thorough and expensive, wasn't it, because they needed to look into what Mr. Wadler had raised; right?

A. Yes.

Q. And do you see on the slide on that same page where it says "Introductions," do you see it says "Findings. No evidence to date"?

A. (Witness examines document.)

Q. Do you see that?

A. Yes.

Q. And you understand they were telling you on June 4th, so far they hadn't been able to find any problems. You knew that, didn't you?

A. Yes.

Q. And right at the very bottom of the page (reading):

"We have found no evidence to date."

Do you see that?

A. Yes.

Q. Turn to the next page in your notes. This will be 8 at the bottom, but let's go right to the second bullet point under "Review."

This is the first -- did I get it right? This meeting with Davis Polk is where you put all the puzzle pieces together to say that Sandy Wadler had done something wrong and he was dead wrong on the FCPA; right?

A. (Witness examines document.)

Q. Correct?

A. (Witness examines document.)

Q. Is that right?

A. Yes.

Q. Look at the second bullet point. You learned that even as of June 4th of 2013, a couple years past when the documents were first being sought, they'd only been able to get 160 sets of all the sales documents for that four-year -- five-year period. Do you see that right there?

A. Yes.

Q. Okay. Turn to the next page.

You understood, did you not, that Davis Polk was telling you, "There were some problems here, but they may not be of the magnitude that we are worried about, but we'll still keep looking"? Isn't that what they told you?

A. Where do you see that?

Q. Well, take a look at "Overview," just on the document problem. Do you see that?

They acknowledge in the first bullet point on the top of the page, right there on page 10 (reading):

"The Chinese version does contain anticorruption provisions, but they are not as robust as the anticorruption language in the company's new post-remediation English model."

Do you see that?

A. Yes.

Q. And they told you (reading):

"For example, Chinese versions do not reference the FCPA or prohibit distributors from using third-party subdistributors."

Right?

A. Yes.

Q. And they told you that Chinese agreements also include certain commercial terms with respect to sales incentives. You understood that was the possibility of a bribery; right?

A. Yes.

Q. And you understood they were telling you that while they hoped there wouldn't be a problem, they hoped it wouldn't show corruption, the problem of the contracts not having the right provisions was something they actually found; correct?

A. Yes.

Q. Okay. And you understood they were telling you that in further PowerPoints, which is that the Chinese distributor agreements included some terms but not the ones that were required; correct?

A. (Witness examines document.)

Q. Correct?

A. Where does it say "not the ones that were required"?

Q. That's what I'm asking you. What's your memory of the meeting? You were there. It put the puzzle pieces together. Did it?

A. I don't -- I don't know.

Q. Well, turn to page -- let's go to page 11. You'll see it says "Issue Number 1." You see that, don't you?

A. (Witness examines document.)

Q. Davis Polk was telling you, "We had a problem with contracts, but we think we fixed it"; but they told you it was a problem, didn't they?

A. Okay.

Q. That's what they told you, isn't it?

A. Yes.

Q. They told you that there were unauthorized commercial terms in those contracts. Didn't they tell you that?

A. Yes.

Q. And they told you that it was based on it not being translated -- it not being in the Chinese contracts; right?

A. Yes.

Q. And, in fact, they told you, did they not, that Bio-Rad China had obtained a written certification from each of the 35 current CDG distributors; right?

A. (Witness examines document.)

Q. Right? You got that, didn't you?

A. I'm not following along where you are, but...

Q. You learned that they talked to some managers and they said, "We didn't think it was inappropriate. Our bad," if you will. You remember that's essentially what Davis Polk was telling you --

A. Yes.

Q. -- they talked to someone? They didn't realize it was bad, but they acknowledged it; correct?

MR. POTTER: Objection. Vague.

THE COURT: Overruled.

THE WITNESS: So could you ask me the question again?

BY MR. WAGSTAFFE:

Q. Sure.

You learned in this very presentation that Davis Polk had found that some of the distributors had said basically, "Yes, we've got these wrong contracts. We didn't notice it." You learned that, didn't you, at the meeting?

A. That some of these distributors said they had the wrong contracts?

Q. Sure.

A. I don't recall that.

Q. Turn to page 19. I think it's 19 or 20. Turn to page 20. You can see it's -- the PowerPoint slides are one on the top, one on the bottom, so that's why I've got two pages per page of our page. Turn to page 20.

A. (Witness examines document.)
Q. In addition to the contract issue, if you'll see down at the bottom --
A. Well, hang on. I can't find the page yet.
Q. I'm sorry. Okay. Look down at the bottom right, page 20, Bates 2393.
A. 2393, 20.
Q. Got it?
A. Okay.
Q. Okay. Now, this is the second issue they were looking at -- right? -- which was that there might be some discrepancies indicative of corrupt payments; correct?
A. Uh-huh.
Q. Is that right?
A. Yes.
Q. All right. And they told you that was an issue that was raised but there was difficulty retrieving certain end-user documentation; correct?
A. Yes.
Q. It wasn't that you knew it was solved. You just hadn't gotten the documents yet; right?
A. I guess that could be an interpretation.
Q. Well, that was your interpretation when you listened to it, wasn't it, that this was still an ongoing issue even in their minds? Right?

A. Yeah, I'm not sure.
Q. Turn to page 24. Let's talk about the amount of documents they had even by this stage a couple years later. Turn to page 24. Do you see that?
Blow that up. Thank you, Sara.
Do you see that, page 24 down at the bottom, Bates 2393?
A. (Witness examines document.) 2393...
Q. It will say -- it will say dash 24 down at the bottom, sir.
A. Yes. Okay.
Q. Okay.
A. But it's actually not page 24, I think, if I read this right but, okay. Go ahead.
Q. So now they're talking about the problem with discrepancies, and they told you they only had 160 sets, even at this late stage, of all the documents they needed to see; right?
A. Yes.
Q. Okay. And that they'd only -- and, in fact, that was a total of about 3 percent of the total for the years in question; right? Do you see down at the very bottom?
If you can blow up the bottom three lines.
A. Yes, I see that.
Q. In other words, there were $83 million of sales just for this two-year period 2009-2010, and they were only able to get

about 2.7 million or 3 percent of all the documents; correct?
A. Yes.
Q. You were still worried, weren't you, that maybe that in 97 percent of the other documents, if you could get them, there might be a problem?
A. There's always a chance.
Q. Turn to the next page, 25, the next page in our notes, 25. Do you see at the top?
A. Yes.
Q. You were told that there were still some free products issues -- right -- in this 3 percent of the documents they looked at? Right?
A. Yes.
Q. That raised a red flag on a continuing basis for you on June 4th, didn't it?
A. Yes.
Q. They told you they thought you were okay, but it was a small sample, there were still some problems, and Sandy had done a good job by raising the issue. Isn't that essentially what they told you?
A. I'm not sure that they said the third piece.
Q. Let's take a look at Exhibit 85.
A. 85.
Q. Don't put it up, please.
You'll recall that 85 was your employee review for the

years 2009-2010. Do you have that in mind? That was shown with all the redactions on it. Do you have that in mind?

A. Yeah. I'm sorry. It's not in this book.

Q. It should be in that little one there. I'm only -- if you'll be careful of my questions as to what to answer.

A. You say 85?

Q. 85.

A. Okay.

Q. That was a review you gave to Mr. Wadler on what date?

A. This was given to him in 2011.

Q. And you know that because on the date it says the date you typed it; right? Right underneath the top, the year 2009-2010, it says the date you typed it; correct?

A. It has a date here in the box, yes.

Q. That's not my question. That's the date you typed it, isn't it? Because that's what you told us. When you put that date in there, that's the date you typed it; right?

A. Typically, but I can't -- I can't tell you that I actually typed it on that date.

Q. Okay.

A. I don't have an actual recollection.

Q. In this review, you were shown some words about FCPA. Do you know that?

A. Yes.

Q. You saw it?

A. Yes.
Q. Clearly at the end of this meeting, you did not have any intention of firing Mr. Wadler in connection with his FCPA activity? You yourself had no such intention; right?
A. Correct.
Q. And after this happened -- by the way, it was a two-year review. Was that your practice, is sometimes combine two years into one?
A. Sometimes.
Q. You hadn't gotten around to the review in 2010; is that right?
A. Sometimes.
Q. Okay. And after the review, Mr. Wadler did help you resolve these issues as you asked; right?
A. Yes.
Q. He helped in the training, didn't he?
A. Uh-huh.
Q. And he helped in updating the contracts, didn't he?
A. Yes.
Q. And that's why by December 20th of 2012 in the third paragraph of that review, you told him he'd done a good job in the FCPA; correct?
A. Yes.
Q. No longer a problem; right? Right? Is that right?
A. Right.

Q. Thank you.

And at the end of this review, did you say words to the effect to Mr. Wadler that he was -- he had served the company very well in his role as the general counsel? Did you say words to that effect?

A. In this review?

Q. I'm asking. Did you say words to the effect that he had served the company well in the regard with respect to resolving major legal issues?

A. In which review?

Q. I'm just asking you, did that come up? Did it come up with him that you --

THE COURT: Which review is the question?

MR. WAGSTAFFE: This review. The one we're looking at right now.

Q. You communicated to him, did you not, that he continues to be a driving force, and you told him that he had served the company well as general counsel, didn't you?

A. Yes.

Q. You told him verbally in the review that his insights were valued by the management team; correct?

A. Yes.

Q. And there was nothing in this review that we've looked at that was intended to convey to Mr. Wadler that he would be replaced if he did not improve; right?

A. (Witness examines document.) I think that's a fair assessment.

MR. WAGSTAFFE: Why don't we look at 114, 3 to 7. Thank you, Sara.

THE COURT: Any objection?

MR. POTTER: No, Your Honor.

THE COURT: Okay. Go ahead.

(Video was played in open court, but not reported.)

THE COURT: We can't hear it.

MR. WAGSTAFFE: Can we try again?

THE COURT: Try again.

MR. WAGSTAFFE: I couldn't hear it.

THE COURT: I can't hear it.

MR. WAGSTAFFE: Can we try it from the start, would that be okay?

Okay. Let's try it from the start if we could. Thank you.

(Video was played in open court, but not reported.)

MR. WAGSTAFFE: Your Honor, let me try it this way. Why don't I just read it. We're going to be doing that with other witnesses who weren't videotaped. Your Honor, I'll just read it. Is that all right?

THE COURT: I have no objection to that.

MR. WAGSTAFFE: Any objection?

MR. POTTER: No.

THE COURT: All right.

MR. WAGSTAFFE: Okay. (reading)

"QUESTION: Okay. Is there anything in this 2009-2010 review that you intended to convey to Mr. Wadler the Board's concern that he should be replaced if things didn't improve?

"ANSWER: No."

Q. You gave Mr. Wadler no warning whatsoever that there were board members, you tell us, who wanted to have him fired in 2010; right?

A. Correct.

Q. You thought Mr. Wadler should be given further opportunities, and you gave them to him; right?

A. Yes.

Q. And, in fact, he got the company through the FPCA investigation crisis during this time; right?

A. It's FCPA.

Q. I'm sorry. I misspoke. Thank you. FCPA.

A. Yes.

Q. And he saw the company through the period, didn't he?

MR. POTTER: Objection. Vague as to "period."

THE COURT: Why don't you put some dates on that?

MR. WAGSTAFFE: Sure.

Q. Through the crisis period of this investigation in or about 2009 through 2011; right?

A. I believe we were not settled with the government when Sandy left.
Q. You have in mind that the e-mail you wrote on the 27th of February -- excuse me -- the 22nd of February of 2013 to your HR person, you have that in mind, don't you, about administrative leave?
A. Yes.
Q. And that's where you're talking about bizarre behavior?
A. Yes.
Q. But, in fact, Mr. Wadler had done nothing else immediately prior to you sending the e-mail that caused you to send it; right?
A. No.
Q. That's right. In other words, there was nothing you can recall that he'd done before February that caused you to -- between the December review that was so positive and February that caused -- you can't think of a single thing that he did that caused you to say he was acting bizarrely. Isn't that what you told us at deposition?
A. No, no. Maybe I misspoke. All your double negatives, sir, are confusing.
Q. All right. Let's do it by --
A. Let's try it again if we could. If you could give me the questions again. I think I may have misspoke.
Q. Okay. Let's just do it with the deposition, 233, 19 to

22.

THE COURT: Go ahead.

(Video was played in open court, but not reported.)

BY MR. WAGSTAFFE:

Q. So, therefore, other than learning about the Audit Committee report, you didn't learn anything else about Mr. Wadler's conduct before you sent this e-mail that caused you to send it, did you?

A. In the last few days before, yes.

Q. Well, I'm talking about immediately before.

A. Yes.

MR. WAGSTAFFE: All right. Could we play 233:23 to 234:1?

THE COURT: Any objection?

MR. POTTER: No objection.

THE COURT: Go ahead.

(Video was played in open court, but not reported.)

BY MR. WAGSTAFFE:

Q. For that deposition you prepared many hours to make sure your testimony was full and complete; right, sir?

MR. POTTER: Objection. Asked and answered, Your Honor.

THE COURT: Sustained.

BY MR. WAGSTAFFE:

Q. Well, let me ask you this: You told us the board recommended the decision. In fact, you made the decision on your own as you told us on direct exam; isn't that right?

A. Yes.

Q. Okay. And you didn't get any new information about Mr. Wadler between April 11th, the day of the board meeting, and June that caused you to terminate him; right?

MR. POTTER: Objection, Your Honor. Asked and answered.

THE COURT: Overruled.

You can answer it.

THE WITNESS: Between what dates? Say again.

BY MR. WAGSTAFFE:

Q. April 11th, the date of the board meeting, and June that caused you to terminate him. No new information; right?

A. No.

Q. I mean, you've told us a lot of things that happened.

A. That's not correct.

Q. Okay. I mean, you told us a lot of things now that you say happened between April 11th and June that caused the termination. That's right, isn't it, what you told us today in this courtroom?

A. Yes.

MR. POTTER: Objection to form.

BY MR. WAGSTAFFE:

Q. Let's go to your deposition.

THE COURT: Overruled.

Go ahead.

MR. WAGSTAFFE: 96, 4 to 12.

THE COURT: Any objection?

MR. POTTER: No objection.

THE COURT: Go ahead.

(Video was played in open court, but not reported.)

BY MR. WAGSTAFFE:

Q. Exhibit 87 is the June review from 2013. You recall that, don't you?

A. (Witness examines document.)

Q. Right? Exhibit 87. You know that one?

A. (Witness examines document.) Yes.

Q. It's the one you typed in July; right?

A. You know, I don't really have a record of when I typed that in my mind.

Q. It wasn't an employee review at all, was it? Because it couldn't possibly be an employee review because the employee was no longer with the company; right?

A. It was not a completed review.

Q. Well, are you telling us that you actually have a memory of making notes before this? Not practice, not what you think happened. Do you have a memory of doing it?

A. I think I've testified that I don't have a memory of doing that.

Q. Well, when you have your practice of doing these draft reviews, do you put in your scores then?
A. No.
Q. You don't. So when you did this in April and you had the draft review when Mr. Wadler was still there, you didn't have your scores in yet?
A. No.
Q. That's because you weren't really intending to cover the previous year. You were going to cover -- you wanted to save your review score until you actually handed it to him because you were going to cover all the time from whatever date you handed it to him; isn't that right?
A. No.
Q. Let's talk about notes. So you don't remember writing any notes; right?
A. Correct.
Q. But it's your practice; right?
A. Yes.
Q. And if you followed your practice here, sir, you'd have handwritten notes, wouldn't you?
A. No.
Q. And you knew by the time you would have thrown them away no sooner than June that those were very important documents for an employee you had just fired; right?
A. I don't remember when I had the notes, when I first

started putting this in the computer, and I do not have those notes. That's all I can tell you.

Q. You would agree with me, wouldn't you, sir, that these notes in your mind would have been very significant about Mr. Wadler?

A. I wish I had kept them.

Q. That's not my question. If you can answer it.

You would agree with me that these were very significant notes; correct?

A. They were significant notes.

Q. And I can read you the deposition testimony that it was your testimony at deposition on multiple occasions that if it's a significant note about someone like Mr. Wadler, you keep it and put it in the file; isn't that right? That was your testimony; right?

A. Unless there's some other form of it.

Q. All right. So the notes that you -- well, let me say this: Do you have a memory of throwing the notes away?

THE COURT: Asked and answered. I think we've --

MR. WAGSTAFFE: Thank you, Your Honor.

Q. Let me ask this question: You just told us on direct that you were negotiating with Mr. Wadler during this very period of time with respect to his case; right? That is June of 2013.

A. Yeah, I don't remember the period in which we were negotiating.

Q. Well, you know, I saw something interesting on your script. You talked about -- you crossed out the word "settlement." Did you see that --

A. No.

Q. -- in your notes? That's Exhibit 88.

Could we put up the first page of Exhibit 88? I think it's the second page. Sorry.

I'm sorry. First page. I got it. I'm sorry.

A. No, second page.

Q. Do you see you changed "settlement" and made it "separation"? Do you see that?

A. Yes.

Q. And you knew that what you were really doing was seeking a settlement with him, don't you, of potential litigation? Correct?

A. (Witness examines document.) What I -- what I have here is what I meant, which is an amicable separation from the company.

Q. All right. You testified that one of the reasons you considered as part of the whole package is Mr. Wadler didn't attend meetings as required; correct?

A. Yes.

Q. Nothing in the 12/20 review of 2012 about that; was there?

A. No.

Q. Nothing in your meeting notes with Mr. Wadler in March where you talked about him not attending meetings; right? Right?

A. In 2012, March 2012. March, yeah, correct.

Q. No word about not attending meetings; right?

A. Correct.

Q. In your script of firing that we just looked at here, not a word about not attending meetings; right?

A. Correct.

Q. And in your creative review in July, not a word about not attending meetings; right?

A. Correct.

Q. Let's look at Exhibit 325 that we just looked at on direct.

Can you blow that up? Thank you.

A. (Witness examines document.)

Q. This was where you say you first learned of the audit report; right? Right? On or about Valentine's Day.

A. Right.

Q. All right. Now, you told us -- I want to look at this for a different reason.

You told me on cross-examination, did you not, that you did think that Mr. Wadler was insubordinate for going to the meeting in New York -- right? -- on those dates?

A. Yes.

Q. And that's because he didn't get authority; right?

A. Yes.

Q. You see right here on the bottom e-mail that on the 12th Mr. Wadler is e-mailing you that he will be out of town working on a matter at the request of the Audit Committee. Do you see that?

A. Yes.

Q. You knew, did you not, he wasn't insubordinate? He was there at the request of the Audit Committee; correct?

A. No.

Q. You just told us on direct examination, sir, that Mr. Drapeau told you that he'd authorized Mr. Wadler to travel. Do you know that? That's what you told us just a few moments ago, that that's what he told you; isn't that right?

A. (Witness examines document.) Just a minute ago?

Q. Just a few minutes ago in this courtroom when you were asked questions by Mr. Potter, you said, when looking at this exhibit, that Mr. Drapeau had told you he'd authorized Mr. Wadler to take this trip; isn't that right?

A. Yes. Yes.

Q. It wasn't insubordinate as you wrote in your notes trying to create a reason for firing at all. It was authorized by the chair of the Audit Committee; correct?

MR. POTTER: Objection. Compound.

THE COURT: Overruled.

THE WITNESS: So it was -- it was -- he was traveling at the behest of the Audit Committee, but I'm still his supervisor.

BY MR. WAGSTAFFE:

Q. Okay. As of March 13th, 2013, your testimony, as I understand it, was that you had reached the conclusion that Mr. Wadler was dysfunctional, that he was erratic, that he was paranoid, he potentially posed threats. Do you recall that testimony?

A. Yes.

Q. Despite all these concerns of yours that you say you had, no performance improvement program was ever instituted by HR?

MR. POTTER: Objection. Asked and answered, Your Honor.

THE COURT: Overruled. You can answer that.

THE WITNESS: No.

BY MR. WAGSTAFFE:

Q. And not an HR record to reflect any of that, is there?

A. Correct.

Q. And you didn't tell Mr. Wadler anything about those things other than what you say you told him in those two meetings reflected in the notes; correct?

A. Yes.

Q. Okay. You understood that your notes, which you kept sporadically, weren't HR records, didn't you?

A. The notes that I kept are not HR records you're saying?

Q. Correct. I mean, if --
A. Yes, that's correct.
Q. That's right. That's the note you keep in your own office to keep track of your own sense of things; right?
A. Yes.
Q. If it rises to a serious level, you bring it to the attention of HR; correct?
A. Yes.
Q. And at a billion-dollar company, you document it, don't you?
A. You try.
Q. And you didn't document any of this, did you, in HR? Did you?
A. Any of what?
Q. Any of the dysfunctionality, paranoid, difficult, yelling. Those are things that came up in this lawsuit after the fact, aren't they?
A. Came up after the fact?
Q. Well, whether they happened or not, they weren't the reasons you fired this individual, are they?
A. That's not correct.
Q. Okay. Let's talk about the report Ms. Tsingos made to you about her supposedly being yelled at by Mr. Wadler; right?
A. Uh-huh.
Q. Again, that was a yelling that took place solely, as you

remember it, in the context of him asking for documents; right?
A. Yes.
Q. Okay. And as you told us on cross -- my examination, you don't remember anything else about that meeting you had with her, do you?
A. No.
MR. WAGSTAFFE: If we could play 40:12-41:16?
THE COURT: Any objection.
MR. POTTER: Just a minute, Your Honor.
(Pause in proceedings.)
MR. POTTER: No objection, Your Honor.
THE COURT: Go ahead.
(Video was played in open court, but not reported.)
MR. WAGSTAFFE: I have nothing further, Your Honor.
MR. POTTER: Nothing further, Your Honor.
THE COURT: Thank you, Mr. Schwartz. You may step down.
THE WITNESS: Thank you.
(Witness excused.)
THE COURT: So what time is it?
THE CLERK: 2:30.
THE COURT: 2:30.
THE CLERK: Do you want to take a recess?
THE COURT: Yeah. Let's take a brief recess, I think. Okay. So, ladies and gentlemen, let's take a ten-minute

afternoon recess. Stretch your legs. Go in the jury room. We'll see you in ten minutes.

(Proceedings were heard out of presence of the jury:)

THE COURT: So what's next?

MS. KRAMER: We have Ann Madden out of order, Your Honor.

THE COURT: Okay. And you're calling her?

MS. KRAMER: Yes.

THE COURT: Okay. And before you do that, I'm going to give them the limiting instruction about the FCPA compliance program.

(Recess taken at 2:32 p.m.)

(Proceedings resumed at 2:41 p.m.)

(Proceedings were heard in the presence of the jury:)

THE COURT: Okay. Welcome back, ladies and gentlemen.

You may recall that I told you at the beginning there might be pieces of evidence that would be admitted for a limited purpose, and that if I instructed you to use the evidence for only a particular purpose, then you had to follow that instruction and not use it for anything else. We're at one of those.

You have heard and may hear evidence that plaintiff failed to implement a FCPA compliance program prior to 2010. I instruct you that this evidence is admitted only for the limited purpose of determining whether plaintiff's report of potential FCPA violation was objectively reasonable and submitted in good faith; and, therefore, you must not -- consider it only for that limited purpose and not for any other purpose.

That was a little confusing so let me tell you -- read the last sentence again.

This evidence is admitted only for the limited purpose of determining whether or not plaintiff's report of potential FCPA violations was objectively reasonable and submitted in good faith; and, therefore, you must consider it only for that limited purpose and not for any other purpose.

Thank you.

So we're going to take a witness out of order, which we sometimes do, just because we try to accommodate everyone's schedules.

So proceed.

MS. KRAMER: Your Honor, the Defense calls Ann Madden.

THE CLERK: Ms. Madden, could you please raise your right hand.

ANN CAROL MADDEN,

called as a witness for the Defendant, having been duly sworn, testified as follows:

THE WITNESS: Yes, absolutely.

THE CLERK: Thank you.

Okay. Please have a seat. Make sure that you speak clearly into the microphone because it acts like a cone.

THE WITNESS: Is this okay?

THE CLERK: Yes. Perfect.

Okay. There's water there if you need it.

And could you please state your full name for the record and spell your last name.

THE WITNESS: Ann, A-N-N, Carol, C-A-R-O-L, Madden, M-A-D-D-E-N.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. KRAMER:

Q. So good afternoon, Ms. Madden. You are the first fresh face we've had in the courtroom for a while, so welcome.

You work for --

THE COURT: I beg your pardon.

MS. KRAMER: I'm sorry?

(Laughter)

THE COURT: No. Proceed. I'm sorry.

BY MS. KRAMER:

Q. You work for Bio-Rad in France?

A. That's correct.

Q. And how long have you worked for Bio-Rad?

A. I joined Bio-Rad in February 2002. So it will soon be 15 years.

Q. And prior to that, you worked for other companies?

A. That's correct.
Q. But you've always worked for Bio-Rad in France?
A. That's right. I was hired in France, and I've lived in France ever since, yes.
Q. Can you explain to the jury, then, why your English is so good?
A. I'm a U.S. citizen. I was born and raised on the East Coast, and I lived in the States until my mid-20s.
Q. What is your current job at Bio-Rad?
A. My title is vice president and general manager of the Immunohematology Division.
Q. And can you explain what that means?
A. Yes. My division makes, basically, blood tests to determine a patient's blood type. It's really important if the patient, for example, goes into surgery and might need a transfusion, that the blood that's transfused into the patient is totally compatible, otherwise the patient could get sick or even die.
Q. By training, are you a scientist or a businessperson?
A. Both. I have an undergraduate degree in mechanical engineering, and then I have a graduate degree from the University of Pennsylvania and also a master's in business.
Q. And where is that from?
A. It's from a university in Europe called the *Insead*.
Q. And even though you work in France, did you know

Mr. Wadler?

A. Yes.

Q. How so?

A. I would travel regularly to Hercules and would see Mr. Wadler in meetings. I would see him in France on occasion when he would come for meetings in France, and we worked together on one negotiation that I can think of. And I guess that's a good list.

Q. So to recap, you would come to California and he would go to France and sometimes you would work together?

A. That's correct.

Q. And this is just a yes or no for now, but as a result of all of that, did you have an impression of his conduct as a business colleague?

A. Yes.

Q. As a result of the 15 years you've spent at Bio-Rad, do you have a view of the company's culture in terms of how people treat each other?

A. Oh, yes.

Q. How would you describe it?

MR. LABAR: Objection, Your Honor. Hearsay.

THE COURT: Sustained.

BY MS. KRAMER:

Q. How would you describe your own experience with the company's culture?

A. We're very nonconfrontational. In meetings we hesitate to really discuss difficult subjects. We sometimes call it the elephant in the room. We're also very consensus driven. We try and make sure that everybody that's concerned agrees with our point of view before we implement a decision. So we're a little slow in making decisions.

Q. For most of the time you worked with Mr. Wadler, was his behavior consistent with the culture as you experienced it?

A. Yes.

Q. Now, I want to focus your attention on late 2012 and the first half of 2013 when Mr. Wadler was still at Bio-Rad.

A. Okay.

Q. Up through 2012, did Bio-Rad France have its own Legal Department?

A. Yes, it did. Ever since I joined the company in 2002, yes.

Q. And who was the head lawyer in Bio-Rad France?

A. A woman named Anne Marie Pierson in English.

Q. Did all of the French lawyers report to her?

A. The entire Legal team, both lawyers and nonlawyers, reported to her, yes.

Q. So let me ask you a few questions about Ms. Pierson, as we would call her here. You knew her?

A. Yes.

Q. You worked with her?

A. Yes.
Q. Was that a good working relationship?
A. It was a satisfactory working relationship, yes.
Q. And did you find her work satisfactory?
A. Yes. The work that we did together was satisfactory, yes.
Q. Did you mostly communicate with her in French or English?
A. I communicated with her in French. I speak French fluently, and I communicate with everybody in the French organization in French except for one or two other English speakers.
Q. And did you also have opportunities to observe her English language skills?
A. Yes, on occasion; for example, in meetings where there would be other English speakers present.
Q. And did you have opportunities to observe her English language writing skills?
A. Yes.
Q. Okay. And what about the English language skills of other French Bio-Rad employees?
A. It varies from extremely fluent to hardly any French at all. I mean, we have the entire spectrum in the organization. I think there are 1400 people in France who work for Bio-Rad, so...
Q. And how did Ms. Pierson's English language skills fit into that range?

A. I would say that she was a bit better than average. Not the best and not the worst by any means.
Q. Did Mr. Wadler interact with the French lawyers?
A. Yes.
Q. And you observed that?
A. On occasion, yes.
Q. And how was his French?
A. I never heard Mr. Wadler speak a word of French.
Q. So was it your impression that Ms. Pierson's English was better than Mr. Wadler's French?
A. Absolutely.
Q. Do you know if there was any impediment to Ms. Pierson and Mr. Wadler communicating via e-mail?
A. Well, I do know that Mr. Wadler did not send his own e-mails. It was his assistant who sent them for him, so that might be considered an impediment because it wasn't a direct communication.
Q. Who did Ms. Pierson report to in 2012?
A. She reported to a man named Daniel Seydoux.
Q. And was he a lawyer?
A. I think I need to spell the name first. His first name is Daniel. His last name is S-E-Y-D-O-U-X.
Could you repeat the question, please.
Q. Sure. Was he a lawyer?
A. No.

Q. Was there anything unusual about a head lawyer reporting to a nonlawyer at Bio-Rad?
A. Well, it was a similar structure to what -- to in the U.S. where Mr. Wadler reported to Norman Schwartz.
Q. So the lawyers reported to Ms. Pierson and then she reported to a nonlawyer manager?
A. That's correct.
Q. In November 2012, did Bio-Rad France announce a reorganization?
A. Yes.
Q. And were you affected by this reorganization?
A. Yes, I was.
Q. Can you explain how so?
A. It was announced that I would take over a portion of Daniel Seydoux's responsibilities, including managing a number of different shared services.
Q. And what do you mean by "shared services"?
A. Okay. For example, I would manage the Human Resources Department, the Regulatory Affairs Department, which is really important in our business, and the Legal Department as well.
Q. Okay. So the French Legal team was going to report to you?
A. That's correct.
Q. Do you recall that an e-mail went around announcing these changes in France?

A. Yes.
Q. And did you receive the e-mail?
A. Yes.
Q. Do you know if Mr. Wadler was also sent that e-mail?
A. Yes. It was sent to many employees in France, as well as all of the executive management in the U.S.
Q. Did you come to learn Mr. Wadler's reaction to the fact that the Legal Department was assigned to report to you?
A. Yes, I did, subsequent to that.
Q. How did you learn that?
A. I -- I was in a -- I was in Hercules in our corporate offices in the end of November, so a few days or weeks after the memo went out, and I was meeting with my boss' boss who is John Goetz, who at that time was the president of the diagnostic business; and John explained to me that --

MR. LABAR: Objection, Your Honor. Hearsay.

THE COURT: Sustained.

BY MS. KRAMER:

Q. All right. So you learned about it through a meeting with Mr. Goetz?
A. That's correct.
Q. Okay. And then did you and Mr. Goetz meet with Mr. Wadler?
A. Yes. Mr. Goetz called over and asked if we could meet with Sandy Wadler, and we went over to the other building to

meet with him.
Q. And how would you describe Mr. Wadler during this meeting?
A. He was angry.
Q. What was he angry about?
A. He was angry because he said that he had asked previously Mr. Seydoux and also our boss Patrick Bugeon, to change the reporting of the Legal Department, and that had not been implemented.
Q. Okay. So putting aside the reasons, had you ever seen him angry before in a company meeting?
A. No.
Q. Did you discuss any particular French Legal team members at that meeting?
A. Yes. We discussed I would say mostly Anne Marie Pierson, who was the manager of the Legal team.
Q. Okay. And do you recall what Mr. Wadler said about Ms. Pierson?
A. Yes. He -- he obviously indicated he had no respect for her. He called her stupid and he called her useless; and he -- without going into details -- he indicated that he didn't think that she should be the manager of this group.
Q. Okay. Had that been your experience with Ms. Pierson, that she was stupid and useless?
A. No.
Q. Was there any discussion about Catherine Loras at this

meeting?
A. Yes. She was the second person that we talked about, yes.
Q. Okay. And what did you discuss about her?
First of all, can you explain who she is?
A. Yes. At the time she was in the Legal Department, and she was one of the patent engineers. What we discussed was --
THE COURT: Let's be careful about this question. So don't ask it that way.
MS. KRAMER: Okay.
Q. Can you tell me if anything was discussed about her health condition without saying what?
MR. LABAR: Lacks foundation, Your Honor.
MS. KRAMER: Well, that's what I'm doing right now, is I'm laying the foundation.
THE COURT: Well, that's not the foundation you have to lay. Try again.
BY MS. KRAMER:
Q. To your knowledge, was Mr. Wadler aware of Ms. Loras' health situation?
MR. LABAR: Objection, Your Honor.
THE WITNESS: Yes.
THE COURT: That's not it either.
MS. KRAMER: I'm sorry?
THE COURT: That's not it either.
Were you present when someone told Mr. Wadler about

Ms. Loras' health condition?

THE WITNESS: At this meeting, I told Mr. Wadler about Ms. Loras' health condition.

MS. KRAMER: May I proceed?

THE COURT: Yes.

BY MS. KRAMER:

Q. Okay. And what did you tell him?

A. I told him that she had breast cancer and that she had been out on medical leave for a number of months being treated for breast cancer.

Q. And why were you telling him this?

A. The reason was that he claimed that she was not qualified for the position of patent engineer. And I explained to him that she had started a course -- a normal course that people take in France for this position but had not been able to finish it because her work was interrupted because of her breast cancer.

Q. And did that change Mr. Wadler's opinion about what should be done about Ms. Loras?

MR. LABAR: Objection. Lacks foundation.

THE COURT: Why don't you say what did Mr. --

BY MS. KRAMER:

Q. Did Mr. Wadler express in your presence any decision to change his mind about what should be done about Ms. Loras?

THE COURT: Let's try it a different way.

What did he say in response to that?

BY MS. KRAMER:

Q. What did he say in response?

A. He -- he maintained that she was not qualified for this position, and he would like her to be removed from the department.

Q. Now, did you put up any resistance at all in this meeting to Mr. Wadler taking over the French Legal team?

A. Absolutely not.

Q. Why not?

A. Because the decision had been made between Mr. Wadler and Mr. Goetz, who was my boss' boss; therefore, there was agreement on both sides. So my role in this was to implement the decision.

Q. And did the French Legal team then get assigned to Mr. Wadler?

A. Yes. We announced the change in reporting of Anne Marie Pierson before the end of December, so I believe she reported in to the U.S. Legal team as of the 1st of January.

Q. Okay. Did you have any other interactions with Mr. Wadler in person related to the reorganization we've been discussing?

A. I had one additional meeting that I remember with Mr. Wadler, which was in March of 2013.

Q. Okay. So, by the way, and before we discuss that meeting, at the time of this meeting, did you know Mr. Wadler had

submitted a memo to the Audit Committee claiming there were FCPA issues in China?
A. I knew nothing about that.
Q. So that fact played no role in anything that you said at the meeting; is that correct?
A. That's correct, yeah.
Q. Who was at this meeting in March of 2013?
A. Okay. There was myself and also the French human resources manager. Her name was Christelle Drouart is her last name, but let's call her Christelle, who reported to me. We were both visiting in Hercules for the week and had various meetings. There was Mr. Wadler. There were three members of his team: Tony Fong, Adam Pressman, and John Cassingham. And there was also Colleen Corey.
Q. And Colleen Corey again is who?
A. She's the vice president of human resources for the company.
Q. And what was the purpose of this meeting?
A. The meeting was to get from Mr. Wadler his desired organizational chart for the French Legal organization and a rationale for the changes that he wanted made so that we could help him to implement these changes.
We had to go through a step in France of formally informing it's called the Workers Council, which is like a Legal body which is elected by the people that work for the

company, and you have to go through certain Legal steps before you implement changes in the organization.

Q. So first let me ask you. You've been to many meetings over the course of your career?

A. Yes.

Q. Does this one stick out in your mind in any way?

A. This is -- this horrible meeting was one of the three worst meetings I've ever attended, frankly, in my professional career of over 30 years.

Q. Were the other two at Bio-Rad?

A. No.

Q. Let's talk about what happened at this meeting.

A. Okay.

Q. So you told us the purpose of the meeting was to help Mr. Wadler with his transition. Again, which French employees were the focus of this meeting?

A. I remember that we talked more about Catherine Loras at this meeting. That's my memory.

Q. And what was Mr. Wadler's position, as he expressed it, at this meeting about Ms. Loras?

A. We explained -- well, he asked us why she was still in the department. We explained that it would take time to find another solution for her given her medical condition; and he said, "That's not my problem. I don't care about that."

Q. And did you specifically remind him at this meeting that

the condition you were talking about was breast cancer?
A. Yes.
Q. Was there a similar discussion at this meeting regarding Ms. Pierson?
A. There was a discussion about Ms. Pierson because we did go over the organization chart that Mr. Wadler wanted to implement, which showed that she would no longer have the -- any team members reporting to her.
Q. And was there also discussion about Ms. Pierson's personal circumstances at this meeting?
A. I remember more Catherine Loras -- speaking about Catherine Loras than speaking about Anne Marie Pierson at this particular meeting, frankly.
Q. So the French Legal team had just been assigned to Mr. Wadler, and his main reaction was that he wanted them out of the department?
A. You mean he wanted who out of the department?
Q. Ms. Loras and Ms. Pierson.
A. That's correct.
Q. Did Mr. Wadler discuss these issues calmly and in a businesslike fashion?
A. No. In this -- in the meeting in March, he was very upset. He yelled on several occasions. He pounded on the table. He got very red in the face. And I -- he didn't but I thought he could have jumped out of his chair really and

grabbed somebody, he was so angry.

Q. Was there somebody in particular you thought he might grab?

A. It was focused at me.

MR. LABAR: Objection, Your Honor. Calls for speculation.

THE COURT: Sustained.

BY MS. KRAMER:

Q. And how long was the meeting?

A. I don't know exactly. I would say it was more than one hour and it was less than two.

Q. Okay. And I guess more importantly, how much of it was consumed by Mr. Wadler's angry outbursts?

A. A reasonable amount of it. The people who did most of the talking in the meeting were Mr. Wadler and myself.

Q. Did you file a formal complaint with human resources?

A. No.

Q. Why not?

A. Well, the VP of human resources was in the room, so...

Q. In all the years you had worked with Mr. Wadler, had you ever seen him behave like this?

A. No.

Q. And in all the years you had worked at Bio-Rad, had you ever seen anyone behave like this?

A. No. I've never seen anybody in -- I've never seen anybody shout and pound on the table in Bio-Rad, no.

MS. KRAMER: Thank you.

THE COURT: Cross?

MR. LABAR: Thanks, Your Honor.

CROSS-EXAMINATION

BY MR. LABAR:

Q. Good afternoon, ma'am.

A. Hello.

Q. There's nearly 8,000 employees at Bio-Rad; right?

A. I believe it's between 7- and 8,000, but I don't know the exact number.

Q. And you've worked there for more than 15 years?

A. No. As I said, I joined in February 2002, and so I will -- my 15th anniversary will be coming up next month.

Q. And among all those people and all that time, you never heard anybody yell?

A. I never saw anybody pound the table, and I never heard anybody shouting in a small meeting.

Q. Have you ever heard anybody yell?

A. I don't remember anybody yelling, no.

Q. You work in France, ma'am; right?

A. That's correct.

Q. And you said the atmosphere is nonconfrontational at Bio-Rad; is that right?

A. That's correct.

Q. Do you mean it's nonconfrontational in France?
A. I'm talking about the company culture, which applies in France as well as in the U.S. and in other places that I've been to.
Q. You don't work on a day-to-day basis in the East Bay home office of Bio-Rad; right?
A. That's correct.
Q. And you haven't ever worked there actually; right?
A. That's correct.
Q. So you don't know what it's like there on a day-to-day basis?
A. Well, I -- I have been traveling to Hercules for the past 14 point some years. For many years it was about three or four times a year. And then in the 19 -- 2013-2014 period it was more like six, seven, eight times a year.
Q. So you're not there on a day-to-day basis?
A. That's correct.
Q. You never heard John Goetz yell?
A. Absolutely not.
Q. You never heard Christine Tsingos yell?
A. No.
Q. And you never heard your CEO, Norman Schwartz, yell?
A. No.
Q. You weren't involved in Mr. Wadler's termination in any way, were you?

A. Absolutely not.
Q. And you were not consulted about his termination by anyone; correct?
MS. KRAMER: Objection, Your Honor. Beyond the scope.
THE COURT: Sustained.
BY MR. LABAR:
Q. You described two times in late November 2012 and one time in March 2013 where Mr. Wadler got angry; right?
A. That's correct.
Q. And he didn't swear or use profanity on either of those two occasions; right?
A. I don't remember any profanity.
Q. Okay. Let's talk about the November meeting first. In that November meeting, Mr. Wadler was upset the French Legal Department had not been assigned to him yet; right?
A. That is what he told me, yes.
Q. But during that meeting, the first one, he really didn't raise his voice very much, did he?
A. He spoke vehemently, but he did not yell.
Q. And after that meeting, the first one, you never expressed any concern to anyone that Mr. Wadler had acted inappropriately in that meeting; right?
A. Could you repeat the question, please.
Q. Sure. And after that first meeting, you never expressed any concern to anyone that Mr. Wadler had acted

inappropriately; right?

A. I discussed with Colleen Corey, who is the vice president of human resources, his desire to remove Anne Marie Pierson from the department, and we discussed the fact that she had always had a satisfactory performance rating and that it would be an inappropriate action.

Q. Okay.

MR. LABAR: Your Honor, I'd like to play a clip from the deposition of Ann Madden, which I've handed a certified copy to your deputy. The date of the deposition is October 27th, 2016. The name of the lawyer who took the deposition was a Kevin Clune. This was not a 30(b)(6) deposition.

THE COURT: What's the page and line?

MR. LABAR: Page number is 80, lines 16 through 20.

THE COURT: Any objection?

MS. KRAMER: One moment, Your Honor.

(Pause in proceedings.)

MS. KRAMER: No objection.

THE COURT: Go ahead.

(Video was played in open court, but not reported.)

BY MR. LABAR:

Q. Let's talk about the second meeting, which was in March; correct?

A. That's correct.

Q. March 2013. And that was another meeting talking about the reorganization of the French Legal Department; right?

A. That's correct.

Q. Did you know that the reason for that reorganization of the Legal Department in France was to help with FCPA compliance?

A. I -- I didn't know anything. Sandy Wadler had explained to us that a reason that we could give the French Workers Council was that this could help with FCPA compliance.

Q. And as part of that second meeting, there were two employees in that department that Mr. Wadler did not think should stay there; right?

A. That's correct.

Q. And as to the first, Anne Marie Pierson, isn't it true that there actually had been discussions about removing her or separating her from the company for months prior to that March meeting?

A. Following the late November meeting, as part of the discussion with Mr. Wadler, I had taken back to France the action to consider what it would take in terms of a severance package to see if Anne Marie Pierson could leave the company because we could clearly see that Mr. Wadler and Ms. Pierson would not get along too well as subordinate and superior.

Q. You mentioned Mr. Wadler, but isn't it true that other members of the Legal Department at Bio-Rad also had difficulty with Ms. Anne Marie Pierson?

MS. KRAMER: Objection. Beyond the scope.

THE COURT: Overruled.

THE WITNESS: I don't know of any other members of the Legal Department who had difficulties with Ms. Pierson.

BY MR. LABAR:

Q. Well, you heard criticism from Bio-Rad employees in California other than Mr. Wadler that Ms. Pierson isolated herself in her office; isn't that true?

A. I remember somebody telling me that. I don't know that that counts as difficulties with Ms. Pierson.

Q. And you also heard criticism from other employees that Ms. Pierson refused to call members of the U.S.-based Legal Department on the phone?

A. I believe I heard that from a member of the U.S. Legal team.

Q. Was that Tony Fong?

A. I don't remember.

MR. LABAR: Your Honor, I'd like to play a video portion of her deposition starting on page 97, lines 11 through 17.

THE COURT: Any objection?

MS. KRAMER: No objection, Your Honor.

THE COURT: Go ahead.

(Video was played in open court, but not reported.)

THE WITNESS: Oh, okay.

BY MR. LABAR:

Q. As of today, Ms. Pierson doesn't work for Bio-Rad; right?

A. I have heard that, but I'm not sure. I don't know that for a fact.

Q. And let's talk about the second person, Ms. Catherine Loras. You concluded less than a month after the March meeting that Ms. Loras did not have the required skills to do her job; isn't that true?

A. No.

Q. Could you open the exhibit binder in front of you --

A. Sure.

Q. -- and take a look at Exhibit 26?

A. (Witness examines document.)

Q. And do you see on Exhibit 26 it's a chain of e-mails? And do you see in the bottom of the first page there's an e-mail? And who sent that e-mail?

A. That was myself.

Q. And who was it sent to?

A. It was sent to Colleen Corey.

Q. This is an e-mail you sent in the ordinary course of business?

A. (Witness examines document.) I suppose so. I don't know what the extraordinary course of business would be.

MR. LABAR: Your Honor, I'd move to admit Exhibit 26.

THE COURT: Any objection?

MS. KRAMER: No objection.

THE COURT: It's admitted.

(Trial Exhibit 26 received in evidence)

MR. LABAR: And if you can blow up the bottom paragraph, the very, very bottom one.

Q. And this is part of the e-mail you sent; right?

A. That's correct, yes.

Q. Is "CL" a reference to Catherine Loras?

A. Yes, it is.

Q. If you highlight the second sentence in that second bullet point. (reading)

"It seems that the situation in Legal is stressful both for her and her colleagues, as she is not able to ensure her workload because she is not there full time and she does not have the required skills," period.

Do you see that?

A. Yes, I do.

Q. And you wrote that; right?

A. I did.

Q. Mr. Wadler told you at that March meeting that he didn't want either of these two employees in his department because he believed they were not qualified; right?

A. He told us that he believed Catherine Loras was not qualified.

Q. And you would agree that whether you agreed with him or not, as the head of the department, Mr. Wadler should be able to make a call as to who's qualified to be in his department or not?
A. I agree that as the manager of the department, it is the manager's decision who he wants in the department and who he doesn't want in the department.
Q. And Ms. Loras actually was later moved out of Legal and into compliance; right?
A. That's correct.
Q. Now, about the yelling and the banging on the table at the second meeting, you didn't make any attempt to create a written record of that outburst, did you?
A. No, I don't think so. No.
Q. And you said you didn't file a complaint with human resourced because Ms. Corey was there already; right?
A. I did not file a complaint with human resources, that's correct.
Q. And you don't know if Ms. Corey filed a written complaint in his personnel file either, do you?
A. I do not have any knowledge of that.
Q. And you didn't ask Ms. Corey or anyone else to take any disciplinary action against Mr. Wadler as a result of that banging on the table; right?
A. I did not ask Ms. Corey to take disciplinary action.

Q. And you never spoke to the CEO, Norman Schwartz, about it either, did you?

A. I did not.

Q. A couple more questions.

When you were in France in a previous job for Bio-Rad, you were in HR; right?

A. No. I was never in HR.

Q. Okay. But you've had to fire people; right?

MS. KRAMER: Objection. Beyond the scope.

THE COURT: Sustained.

MR. LABAR: I'll rephrase.

Q. Well, you would agree that a lack of performance or poor performance should be documented before someone is fired; right?

MS. KRAMER: Objection. Beyond the scope.

THE COURT: Overruled.

THE WITNESS: Could you repeat the question, please.

BY MR. LABAR:

Q. Sure.

You would agree that a lack of performance or poor performance should be documented before someone is fired; correct?

A. That is part of our company policy. We do annual performance reviews and we document nonperformance, yes.

Q. In writing; right?

A. They are written performance reviews, yes.
Q. And you write those contemporaneously; right?
A. We do them as part of an annual process.
Q. All right. And you flew here from France; right?
A. No, that's not correct.
Q. You didn't fly here from --
A. I flew here from Shanghai. I was in a business meeting in Shanghai.
Q. Did you fly economy?
A. Yes.

MR. LABAR: No further questions.

THE COURT: Any redirect?

MS. KRAMER: Just one.

REDIRECT EXAMINATION

BY MS. KRAMER:
Q. Ms. Madden, in your view, does the fact that there may have been criticisms of Ms. Loras or Ms. Pierson explain the behavior of Sandy Wadler at the March meeting?
A. No.

MR. LABAR: Objection. Calls for opinion, improper.

THE COURT: Sustained.

MR. LABAR: Move to strike.

THE COURT: The jury is ordered to ignore that last answer.

MR. LABAR: No further questions.

THE COURT: Thank you. You may step down.

(Witness excused.)

MR. WAGSTAFFE: Your Honor, we have some reading now. This might be a good time, given how it is to listen to reading, to take a break if we could.

THE COURT: How long?

MR. WAGSTAFFE: It could be an hour.

THE COURT: Oh, well, we don't have an hour today.

MR. WAGSTAFFE: That's right. I'm just thinking given the time and maybe an early departure we could do today.

THE COURT: That's fine. Let's talk about the schedule after the jury is gone.

So, ladies and gentlemen, we're done for the day. Thank you for your -- you're really terrific paying attention. I really appreciate that. We all appreciate that.

But remember the admonitions. Don't communicate about this case. Don't let anyone communicate with you about it. Don't research. Don't look online.

Enjoy your evening. I'll see you tomorrow morning bright and early.

(Proceedings were heard out of presence of the jury:)

THE COURT: Okay. Let's talk about timing. What's happening next?

MR. WAGSTAFFE: Your Honor, we have about I would say 40 minutes of reading, which we have to do because we don't have a transcript -- we don't have videos. We'll do with someone sitting in the chairs as Your Honor instructed.

And then we'll put on our two experts tomorrow. We've indicated that to the other side.

And then we will play one last video, Mr. Drapeau, and I think we'll probably rest.

MR. LABAR: Your Honor, he left out one witness.

MR. WAGSTAFFE: Oh, did I.

MR. LABAR: Ms. Rosanne Model.

MR. WAGSTAFFE: My bad.

THE COURT: So reading, Ms. Model -- who will testify in person here?

MR. WAGSTAFFE: Ms. Model will be in person here. I think she may be first thing in the morning.

Right?

MR. LABAR: Yes.

THE COURT: Two experts. And how long will the Model and the experts' direct?

MR. LABAR: Model 15 or 20 minutes, Your Honor.

THE COURT: Uh-huh.

MR. LABAR: Experts?

MR. CLUNE: Experts will probably be about an hour, maybe a little more.

THE COURT: Each?

MR. CLUNE: No. Total.

THE COURT: And Drapeau, that's got to be 20 minutes, half an hour?

MR. WAGSTAFFE: Yeah. That's about right.

THE COURT: Okay. So you may finish tomorrow depending on the cross.

And then what happens?

MR. POTTER: The Model cross will be probably about 15 to 20 minutes as well, Your Honor, I would imagine.

THE COURT: Okay. All right. Anything we should take up?

MR. WAGSTAFFE: Your Honor, I just want to know, are we going to have enough witnesses from the defense? They've only given us one name for tomorrow.

MR. LABAR: No. They've given us more.

MR. WAGSTAFFE: Oh, they've given us more?

I'm happy to be out of the loop. I go home at night. Thank you, Your Honor.

THE COURT: That's a good idea. Thank you-all. See you tomorrow.

ALL: Thank you, Your Honor.

(Proceedings adjourned at 3:20 p.m.)

CERTIFICATE OF REPORTERS

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Debra L. Pas, CSR 11916, CRR, RMR, RPR

JoAnn Bryce, CSR 3321, CRR, RMR, FCRR

Monday, January 23, 2017